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CANADIAN INDUSTRIAL RELATIONS

The Report of the Task Force on Labour Relations

Privy Council Office
December 1968

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Canadian Industrial Relations

The Report of
Task Force on Labour Relations

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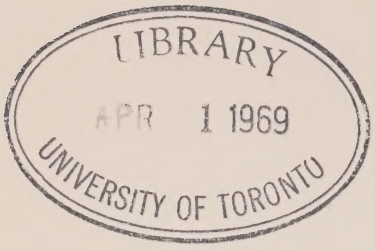

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The Queen's Printer
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1969

December 31, 1968

The Right Honourable Pierre-Elliott Trudeau
Prime Minister of Canada
Ottawa, Canada.

DEAR SIR:

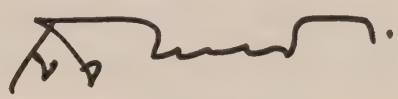
It is my pleasure to transmit to you the Report of the Task Force on Labour Relations entitled Canadian Industrial Relations.

Our terms of reference were to examine industrial relations in Canada and to make recommendations to the government with respect to public policy and labour legislation and on such other matters as were considered relevant to the public interest in industrial relations in Canada.

My colleagues and I hope that this Report will contribute to the review which the Government of Canada is making of policy on industrial relations matters.

In addition, we would hope that this Report and the studies, which will be published later, will generate a greater understanding of the problems and issues in the field of industrial relations in Canada; and that they will stimulate further research in this important area.

Yours sincerely,



H. D. WOODS,
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ACKNOWLEDGMENTS

In discharging our mandate (see Appendix A), we received assistance from several committees and many individuals whose services we should like to acknowledge.

We wish to thank the members of the Consultative Committee of the Economic Council of Canada to the Task Force on Labour Relations, chaired by Mr. R. M. Fowler and consisting of the members of the Labour-Management Committee of the Economic Council of Canada augmented by ten other management and labour representatives (see Appendix B); the Senior Government Committee (see Appendix C); senior members of the Canada Department of Labour, particularly Dr. George V. Haythorne, Deputy Minister, Mr. Bernard Wilson, Assistant Deputy Minister, Dr. Gil Schonning, former Director General of Research and Development, and Mr. Harry Waisglass, Director General of Research and Development, for their advice and consultation and for making available members of their research staff; the Chairman, members and senior staff of the Canada Labour Relations Board (see Appendix D); the Deputy Ministers of the ten provinces, who met with us several times during the course of our inquiry (see Appendix E); the Canada Department of Manpower and Immigration; the Dominion Bureau of Statistics; the Canada Department of Finance; and the Economic Council of Canada.

We wish to give special acknowledgment to the specialists who undertook research projects and those who assisted them (see Appendix F).

During our visits to foreign countries we were the beneficiaries of the good services of many persons, whose organizations are listed in Appendix G.

We wish also to thank the persons who conferred with us as we conducted our inquiries across the country (see Appendix H) and to thank persons who prepared briefs and submissions in response to our solicitations (see Appendix I).

We owe a special obligation for assistance, advice and consultation from Professor Benjamin Aaron, Director of the Institute of Industrial Relations, University of California at Los Angeles; Professor H. W. Arthurs, the Osgoode Hall Law School of York University; Mr. Pat Conroy, Canadian Labour Counsellor, Washington, D.C.; Dr. Alton Craig, Chief, Industrial Relations Research Division, Economics and Research Branch, Canada Department of Labour; Miss Donna Doyle, recent graduate in commerce, McGill University; Professor John T. Dunlop, Department of Political Science, Harvard University; Professor J. E. Isaac, Monash University, Victoria, Australia; Mr. Paul Malles, of the staff of the Economic Council of Canada; Mr. Marshall Pollock, Counsel, Royal Commission Inquiry into Labour Disputes (Ontario); the Honourable I. C. Rand, Commissioner, Royal Commission Inquiry into Labour Disputes (Ontario), and Mr. D. A. Smith, graduate student in the Department of Political Economy, University of Toronto.

In a special place of honour we should like to list the staff of the office of the Task Force: in particular Mrs. Eileen Dew, Secretary; Mlle Suzanne Blais, Secretary; Mr. H. A. Wilson, Administrative Secretary; Mr. W. K. Farrell, Office Supervisor; and Mrs. Eva Scott in our Information Centre.

We wish to thank our own secretaries for their tireless efforts during our association with the Task Force: Mrs. Carol Biely, Miss Margaret M. McNulty and Miss Nola Roper.

We wish also to acknowledge the valued service of our senior research staff: M. Gaston DesCôteaux, Assistant Research Director, of the Faculty of Law, University of Ottawa; Mr. W. J. Victor Johnston, Associate Research Director, previously Director of the Pay Research Bureau; and Dr. George Saunders, Director of Research and Executive Officer of the Task Force, on loan from the Canada Department of Labour. We find it difficult to put into words the obligation we owe to Dr. Saunders for his services throughout the life of this operation. As senior member of the permanent staff and as Director of Research, Dr. Saunders bore critical and indispensable professional, scholarly and administrative responsibilities which, in their execution, make his contribution to the discharge of our terms of reference a unique act of public service. That he did so with constancy, humour and grace heightens our obligation to him.

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PART ONE

INTRODUCTION

INTRODUCTION

INDUSTRIAL RELATIONS UNDER ATTACK

1. Periodically the conduct of labour-management relations in any country is subject to severe criticism. In Canada, as well as in many other western countries, the attack on collective bargaining has been mounting in recent years. The result verges on a crisis of confidence in the present industrial relations system.

2. Why has the public apparently lost faith in the prevailing collective bargaining process? The rash of strikes which have caught the headlines in recent years provides much of the explanation. In many of these disputes the protagonists seem to suffer less than the public. Worse still, there is apprehension that the parties are using the public as their whipping boy while they work out their differences.

3. Many of these stoppages have interrupted services seldom before affected by collective bargaining. Strikes by professionals—even doctors, nurses and teachers—have disturbed the public. So also have shutdowns in what have long been thought to be essential services, notably school, hospital and postal services.

4. Public misgiving has been aggravated further by violence that has accompanied some recent labour disputes. Pictures of trucks being overturned and of pickets and police scuffling has not helped the image of industrial relations.

5. Nor can one minimize the damage done by corrupt and undemocratic practices which the Norris Commission revealed in the Seafarers' International Union of Canada. Added to earlier revelations of the unseemly conduct of certain unions in the United States, the publicity convinced many that organized labour was not the idealistic force for good that they had been led to believe.

6. To these events must be added a public predisposition to blame unions and collective bargaining for inflation which has plagued the Canadian economy in recent years.

7. Whether these alleged ills are merely symptoms of more profound social problems is ignored by the public. Unions and collective bargaining are ready targets for public wrath.

8. It is in this troubled context that we were assigned the task of examining the performance of Canada's present industrial relations system, of which collective bargaining and unions are vital components.

METHODOLOGY

9. Because of the complex and sensitive nature of our assignment we have drawn on a variety of techniques and sources of information.

(1) Research Program

10. We began our task by designing and putting into effect an elaborate research program, the nature and details of which are shown in Appendix J. Although this program assisted us greatly, it suffered from several handicaps. The program had to be constructed and allocated quickly in order to meet our commitment. More significant was the shortage of first class scholars in the industrial relations field to undertake a crash program. This shortage was reflected in the dearth of primary research materials upon which to base the program. As in many other areas of public concern, a price was paid for years of neglect of social science research in this country. In short, our task was immensely complicated by the lack of resources devoted both to the development of scholarship in industrial relations and to the greater research base that would have derived from that scholarship.

(2) Foreign Investigations

11. To supplement our research program, we visited the United States and a number of European countries to study their industrial relations systems. In addition, we had lengthy meetings with persons familiar with the Australian approach to labour relations. More detailed information with respect to these foreign investigations is provided in Appendix G.[1]

12. Although we learned much from these foreign investigations, our basic conclusion with respect to their relevance to Canada will disappoint those who think this country should emulate any of their approaches. With the exception of the United States, and even there in many respects, transplants from foreign systems hold little prospect of improving Canadian industrial relations. Each country has its own history, environment and institutional framework; their differences are so substantial that part of one system cannot be grafted onto another with any reasonable expectation of success.

[1] See also Paul Malles, *European Industrial Relations Systems,* Task Force Study.

(3) Meetings with Parties of Interest

13. One of our most fruitful sources of information was confidential meetings with leading trade union, management and government representatives across the country. The meetings afforded us an opportunity for a frank exchange of views on a number of troublesome issues. We were impressed by the candour of these sessions.

(4) Submission of Briefs

14. We benefited from the submission of numerous briefs. Some were submitted before and others after the aforementioned meetings with the parties of interest. Others were sent to us independently of the meetings.

(5) Meetings with Special Groups

15. Throughout our inquiry we benefited from the advice and counsel of several formal and informal committees composed of individuals having a special interest in our task. From time to time we met with a special subcommittee of the Cabinet to report our progress and to exchange viewpoints on our work to date. We also met with a Senior Government Committee. In addition, we met four times with our Consultative Committee of the Economic Council of Canada. A number of meetings were arranged with the Deputy Ministers of Labour from every jurisdiction in the country. All these sessions were of invaluable benefit to us not only in planning our work but also in reviewing some of our tentative findings.

OUTLINE OF THE REPORT

16. The balance of the Report consists of four parts. The part that follows, Part Two, seeks to describe the Canadian industrial relations setting through a review of fundamental western values, an examination of the socio-economic-political environment, and an analysis of the evolution and operation of the industrial relations system, with a major caveat concerning possible changes in the role of collective bargaining within that system. In this Part we give our reasons for accepting the place of the collective bargaining process within the present industrial relations system while recognizing that the process is not an end in itself but is a public policy that draws its strategic validity from the nature of our society, is susceptible to obsolescence if it does not change with its social environment, and may not survive radical social transformation.

17. One of the most problematical critiques of collective bargaining relates to its role in the constant struggle to maintain an acceptable harmonizing of the competing goals of a high level of employment, a high rate of economic growth, reasonable stability of prices, a viable balance of payments and an equitable distribution of rising incomes. Because of the intense

interest in the question whether there are causal relationships between collective bargaining, the problem of attaining these goals simultaneously, and the rate of inflation (relationships not unrelated to the creation of this Task Force), we devote Part Three to an exploration of the "trade-off" problem and the position of collective bargaining in it.

18. Part Four is a critique of the present system of collective bargaining. It concentrates on inherent limitations and corrigible dificiencies in the system as a prelude to making recommendations for change.

19. Part Five contains our recommendations over a wide range of matters. Particular attention is given to the structure and operation of collective bargaining, union and management rights and responsibilities, potential emergency disputes, picketing and boycotting and enforcement of the law, adaptation of collective bargaining to industrial conversion, collective bargaining and the trade-off, the structure, role and powers of the Canada Labour Relations Board as the paramount instrument for the administration of the collective bargaining system, and constitutional obstacles to the reformation of national labour policy.

PART TWO

INDUSTRIAL RELATIONS IN THE CANADIAN SETTING

INDUSTRIAL RELATIONS IN THE CANADIAN SETTING

20. The term industrial relations is popularly used in many ways, often with different and conflicting meanings. It is risky to proceed on the basis of a precise definition, since none is likely to command a general consensus.

21. The industrial relations system may be described as the complex of market and institutional arrangements, private and public, which society permits, encourages or establishes to handle superior-subordinate relationships growing out of employment and related activities. Even this description does not do justice to our concept of the industrial relations system. The schematic presentation in Chart 1[1] shows a variety of environmental factors affecting the major parties of interest within the system which, through several processes of interactions, produce results that feed back into the system. Within this dynamic framework the focus of this Report is on certain elements more than others. Emphasis is placed on the legal environment, the parties of interest, collective bargaining and the results of the system.

PRINCIPLES UNDERLYING THE SYSTEM

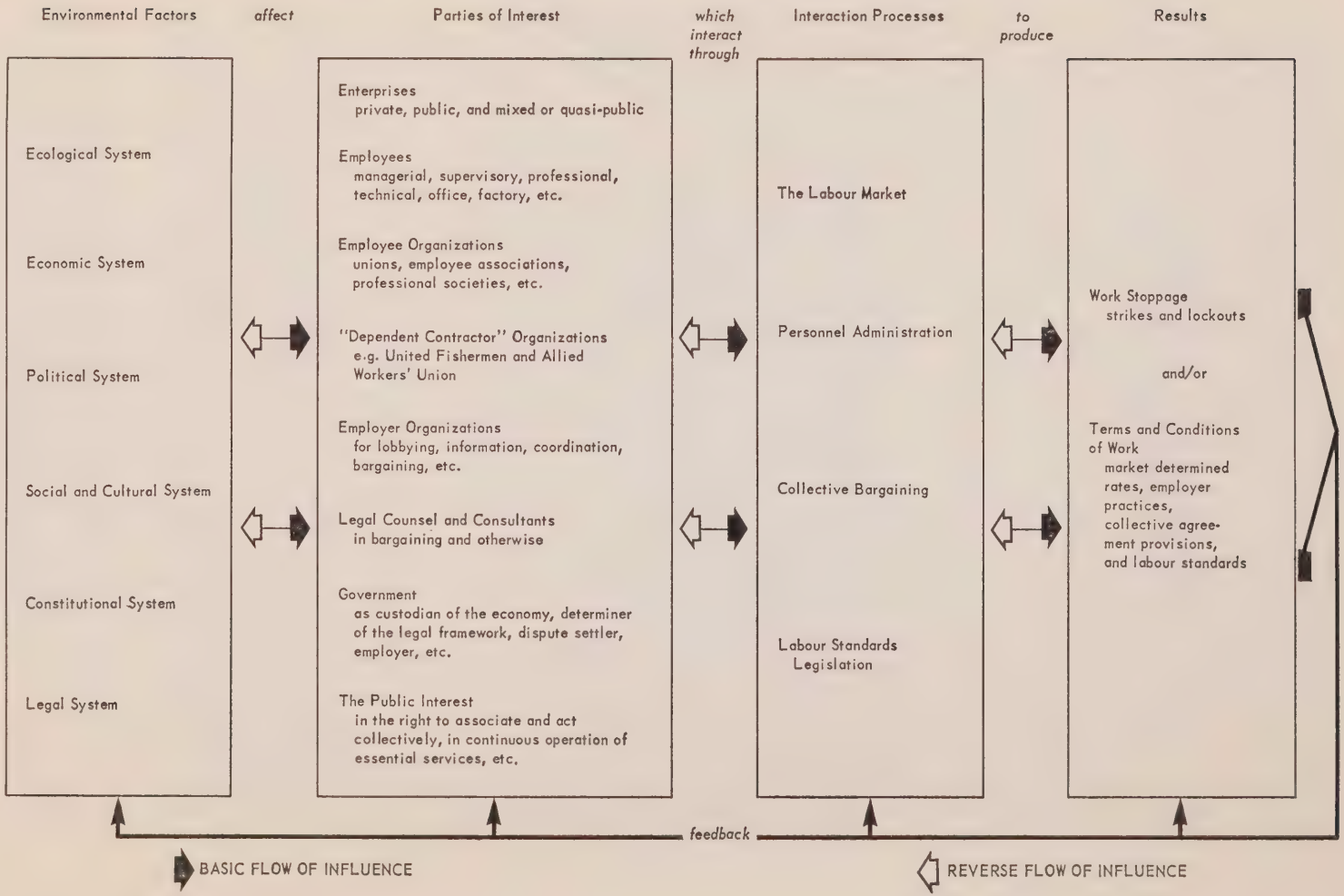
22. The principles which underlie the Canadian industrial relations system are reflected in Canada's heritage of fundamental western values, in the liberal democratic political system adopted in this country and in the modified capitalistic or mixed enterprise economy that has developed.

23. In any society there prevail values fundamental to it and to the goals it pursues. These values are often enshrined in the concept of fundamental human rights, or "natural rights". Relating mainly to freedom of the

[1] The basis of this definition and schematic presentation was first suggested in John T. Dunlop, *Industrial Relations Systems,* (New York, Holt, 1958). A refinement for use by the Task Force was suggested by Dr. Alton Craig of the Canada Department of Labour; see Alton Craig, "A Model for the Analysis of Industrial Relations Systems", a paper presented to the Annual Meeting of the Canadian Political Science Association, Ottawa, June 1967.

Chart 1

A SCHEMATIC PRESENTATION OF THE CANADIAN INDUSTRIAL RELATIONS SYSTEM



person, property rights, and freedom of thought and political action, they compose the liberal democratic traditions of western society designed to enhance the free development of the human personality. The concept of natural rights implies that they exist in the natural order of social intercourse, for man to perceive as he will or as they are revealed to him. Whatever their metaphysical source, they are the product of great moments in history, of the hot fire of human conflict. As such, they are the product of historical accident, because circumstances dictate the kind of right or freedom that society is concerned to recognize and defend. They are also the product of human perceptiveness, or lack of perceptiveness, and of re-evaluation over a long period of time. The historical events may thus be viewed as dramatic moments in a continuing search for the identification and protection of fundamental human values as means to human fulfillment.

24. The *Great Charter* of 1215 is a foundation of the rule of law—the right to be judged by one's peers and by the law of the land. The *Bill of Rights* of 1689 established the supremacy of Parliament and the principle of free elections, paving the way for a constitutional monarchy and eventually for democratic government, as the principle of universal manhood suffrage was gained in the 19th and 20th centuries. The subordination of governments to the governed inheres in the *Declaration of Independence* of 1776, as does the recognition of the inalienable rights to life, liberty and the pursuit of happiness. Much the same values are reflected in the *Declaration of the Rights of Man* of 1789, with the additional recognition of property rights. To these are added, in the First Amendment to the *United States Constitution* of 1791, freedom of religion, speech, the press and assembly; the Fifth Amendment adds the right not to be deprived of life, liberty or property without due process of law, a reaffirmation not merely of freedom but of freedom under the law. The *Canadian Bill of Rights* of 1960, in section 1, declares the right of the individual to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law; the right of the individual to equality before the law and protection of the law; freedom of religion, speech, assembly and association, and the press. The Bill reflects not history itself so much as the lessons of history.

25. The foregoing instruments are national in scope. In addition, there are some seventeen international declarations and covenants which, because of their contemporary nature, add profoundly to the principles of the protection of fundamental human freedoms under the rule of law in an environment of democratic government.

26. Two documents bear special comment. The preamble of the United Nations Charter reaffirms faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women. Most of the rights of the person and of freedom to think and act under the law, as set out in the 1948 Declaration of Human Rights, were gained or recognized long before in the western democracies. But the Declaration is a landmark in the assertion of economic rights and the pursuit of economic

justice as a means of enhancing the free development of the human personality. The Declaration includes such rights as the right to work, to protection against unemployment, to form and join trade unions, to social security, to rest and leisure, to an adequate standard of living, to education, and to participate in the cultural life of the community.

27. In brief, fundamental human rights today embrace as ideals the political rights of freedom of speech, religion, association and assembly; the egalitarian right of freedom from discrimination on the basis of race, national origin, colour, religion and sex; the economic right to a decent standard of life; and, for Canada at least, the linguistic right to the use of the mother tongues of French and English.

28. These rights are supported by the rule of law in a democratic society. The rule of law itself constitutes a fundamental human right: to security of life, liberty and property, security of the person and personality, and the assurance of procedural fairness—due process of law—in the determination of rights and obligations. Section 2 of the *Canadian Bill of Rights* articulates many of these procedural safeguards to the administration of justice according to law.

29. The liberal democratic political system of the confederation of Canada is that of parliamentary democracy: the sovereignty of parliament and provincial legislatures in their respective spheres, in a constitutional monarchy under universal manhood suffrage; a court system with an independent judiciary; federal and provincial executives accountable respectively to parliament and to the legislatures; and a parliament and legislatures chosen by regular and free elections through a system of freely created political parties, and operating on the principle of responsible government.

30. The principle of freedom under the law, in an environment designed to facilitate individual development and participation, has produced in North America a pluralistic society reflecting a multitude of cultural backgrounds, values, interests and goals. The underlying concepts of the free individual, private property and freedom of contract have produced an essentially capitalistic although mixed enterprise economy. Subject to certain qualifications, the key element within this system is the corporation, a legal entity which provides a means both for capital accumulation and for limiting the risks of enterprise to that capital.

31. The motivating force within this general framework is economic self-interest. Within the limits of various laws designed to protect the public interest, decisions are permitted to be made on the basis of individual or institutional gains. These decisions set in motion economic forces that effect the distribution of available resources among competing ends through the interaction of capital, labour, and other markets.

32. It is not hard to discover why western societies have, with varying degrees of doubts, reservations and constraints, accepted the institutions and incentives of the modified capitalistic or mixed enterprise framework. Despite

its faults and shortcomings, the system has so far provided a greater opportunity for individual and social fulfillment and achievement than any viable alternative. No effective substitute for the relatively free market has yet been found to ensure optimum allocation of resources. Nonetheless, it has its deficiencies and detractors.

33. State involvement in the mixed enterprise system has increased. Although it is still basically a decentralized market-oriented system, the role of the state can be seen in an increasing number of areas. In some cases government has intervened because of imperfections in the operation of the system. In other cases intervention has been brought on by inequities growing out of its unrestrained operation.

34. Cyclical fluctuations have forced the state to intervene in an effort to smooth out the growth rate of the economy. The early classical economic notions about the self-correcting nature of the system have been proved unsound. As a result government has had to employ fiscal, monetary and related policies when the economy proved unable to produce socially acceptable results.

35. Of more immediate interest have been the efforts by society to curb the worst abuses of the system. Although state intervention in industrial relations began, in effect, before the industrialization process, such intervention abated for a time after its introduction and later reappeared in a variety of forms. Government had to take cognizance of the hardships created by unemployment, underemployment, sweated labour, low wages, long hours, brutal supervision and unsafe and unhealthy working conditions. The result was a gradual introduction of protective labour standards legislation to prevent the harsh social consequences that arose from unimpeded economic determinism. Thus the force of law was put behind what were considered to be minimum standards of pay and working conditions. Politically determined criteria of equity were substituted for the terms of employment that would have been produced by unrestrained market forces. Government thereupon became party to the employment relationship.

36. At the same time, workers began to join unions and to engage in collective bargaining with their employers. Although employers resisted this development with all resources at their command, it eventually became apparent that unions and collective bargaining were natural concomitants of a mixed enterprise economy. The state then assumed the task of establishing a framework of rights and responsibilities within which management and organized labour were to conduct their relations.

37. Government has consequently come to play an integral part in the prevailing economic system. It is government's expanding role that has made it a "modified" capitalistic or "mixed" enterprise system. Yet despite this growing state involvement, the economy remains largely governed by competitive and institutional forces created by individuals and organizations pursuing their own economic and social goals.

EVOLUTION AND OPERATION OF THE SYSTEM

(1) Environmental Considerations

A. POLITICAL, ECONOMIC AND SOCIAL ENVIRONMENT[2]

38. The principles underlying the Canadian industrial relations system discussed in the previous section provide a set of fundamental environmental factors. Operationally, however, there are a number of other parameters of significance.

39. A mixed enterprise economy, for example, is usually subject to cyclical fluctuations. The changing state of the economy can have a marked effect on the relative bargaining power of union and management and on the level of industrial conflict. This makes the Canadian industrial relations system susceptible to a number of indirect influences from abroad, since the level of economic activity in this country is much affected by foreign developments.

40. The climate, physical proportions and natural resources of the country are important variables. Canada's harsh winters and the seasonal nature of many of her industries lead to special labour relations problems because of the resulting irregular flows in incomes and associated characteristics. Canada's geographic spread and regional concentration of resources and production help explain why it took so long for unions to move across the country and to unite in any sort of a coherent central body. In addition, these factors, together with Canada's heavy dependence on the international economy and her federal form of government, help explain why collective bargaining is so decentralized and fragmented. Regional differences affect industrial relations in other ways. For example, internal wage differentials, reflecting the varying degrees of industrial development by region, remain a contentious issue.

41. The role that natural resource booms have played in Canada's history is mirrored in the labour turbulence that has often accompanied these sectoral breakthroughs. Resource industries, especially lumbering and mining, have frequently proved a source of much industrial conflict. British Columbia's record of industrial relations shows that there is likely to be disproportionate unrest where a regional economy is based heavily on primary industries other than agriculture. Relationships between labour and management in such industries are often exacerbated by their isolated locations.

42. The pace of industrial conversion can be upsetting. It does not matter whether that conversion takes the form of technological change, exhaustion of raw materials or market shifts. The consequence can be a dramatically altered situation within which the parties must readjust their relationships.

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[2] See H. C. Pentland, *A Study of the Changing Social, Economic and Political Background of the Canadian System of Industrial Relations,* Task Force Study.

43. Another feature which has had an impact on Canadian industrial relations is the number of foreign based, especially United States, unions and corporations which have extended their activities into this country. This is reflected in a long history of rivalry between national and international union groups, as well as in a number of other contentious areas. Although the significance of the international union presence can be exaggerated, particularly in the collective bargaining arena, it is not a factor to be minimized or ignored.[3]

44. Equally, if not more significant, has been the penetration of United States corporate enterprises into this country.[4] If there is a reason for concern about any United States influence on collective bargaining in Canada, that concern should be focused more on corporations than on trade unions; in most cases the former can wield much more authority over their Canadian offspring. In some cases, as in automobile manufacturing, both management and labour appear to have agreed to transfer effective decision making power in collective bargaining to the United States side of the border. Although the explanation seems to lie in unique circumstances relating to the Canada-United States Agreement on Automotive Products, there are a few isolated instances where the same thing has happened without any special inducement. The auto case in itself raises some fundamental questions about the sovereignty of the Canadian industrial relations system. If this major precedent sets a pattern for the future, the United States presence will become of overriding significance. In the meantime, similar problems can arise within some parts of Canada itself, especially when control on either or both sides of a bargaining relationship is found to lie in another political jurisdiction.

45. The fact that Canada is made up of two major linguistic and cultural groups is another important environmental consideration. French Canada has produced a distinctive labour movement which, although numerically weaker than its United States and English Canadian based rivals, is a force to be reckoned with in Quebec and within the federal jurisdiction. Another dimension of the same feature is the impact in many enterprises in Quebec of the continuing existence of unilingual English-speaking management dealing with a predominantly French-speaking work force.[5]

46. In other parts of the country a major problem has been presented from time to time by waves of non-English-speaking immigrants of low education and skill. At various stages in Canada's history some employers have used the resulting cleavages in their work forces to delay or forestall

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[3] For further reference see John Crispo, *International Unionism: A Study in Canadian-American Relations,* (Toronto, McGraw-Hill, 1967).

[4] For a broader discussion of the role of United States subsidiaries in Canada see A. E. Safarian, *Foreign Ownership of Canadian Industry,* (Toronto, McGraw-Hill, 1966); and Report of the Task Force on the Structure of Canadian Industry, *Foreign Ownership and the Structure of Canadian Industry,* (Ottawa, Queen's Printer, 1968).

[5] See the special issue "Language at the Work Situation in Quebec" in *Relations industrielles/Industrial Relations,* Vol. 23 (1968) No. 3.

unionization. Because such tactics usually go hand in hand with attempts to exploit newcomers, the situation sometimes gives rise to explosive industrial relations consequences.[6]

B. CONSTITUTIONAL AND LEGAL ENVIRONMENT[7]

47. Under the *British North America Act* the Parliament of Canada has general authority to enact laws for the "Peace, Order and good Government of Canada" (preamble of section 91). It has specific authority in 31 areas enumerated in section 91, of which the following may be considered to relate particularly to the constitutionality of labour legislation: The Regulation of Trade and Commerce (2); Unemployment insurance (2A); Postal Service (5); Navigation and Shipping (10); Sea Coast and Inland Fisheries (12); Ferries between a Province and any British or Foreign Country or between Two Provinces (13); The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters (27); and, Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces (29). Under section 92(10) Parliament retains jurisdiction over (a) "Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province"; (b) "Lines of Steam Ships between the Province and any British or Foreign Country"; and (c) "Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces." Section 96 gives jurisdiction to the Governor General to "appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick." This exclusive jurisdiction makes vitally important the distinction between a court and an administrative tribunal exercising quasi-judicial powers, as are labour boards. The former are beyond the reach of provincial legislatures to change; the creation and regulation of the latter fall within their competence.

48. In competition with these constitutional powers of Parliament, provincial legislatures have jurisdiction over Matters coming within the 16 Classes of Subjects enumerated in section 92. The most important of these, insofar as labour legislation is concerned, is the 13th, "Property and civil Rights in the Province"; although the 16th, "Generally all Matters of a merely local or private Nature in the Province", is not irrelevant.

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[6] For a recent example of such a sequence of events, see H. Carl Goldenberg, *Report of the Royal Commission on Labour-Management Relations in the Construction Industry*, (Toronto, Queen's Printer, 1962).

[7] See E. E. Palmer, R. G. Atkey and G. J. Brandt, *The Federal-Provincial Division of Powers*, Task Force Study; Edith Lorentsen and Joel Bell, *The Development of the Public Policy on Labour Relations in Canada*, Task Force Study; and A. W. R. Carrothers, *Collective Bargaining Law in Canada*, (Toronto, Butterworths, 1965).

49. The first federal legislation in the labour field was enacted in 1872. It was an adaptation of the English reform legislation of 1871 to declare that the purposes of a trade union are not unlawful merely because they are in restraint of trade, and to release peaceful picketing from the strictures of the criminal law. Later legislation liberalized the doctrine of criminal conspiracy. The object of the statutes, in terms of collective bargaining, was to extend freedom of association and to provide a legitimate role for picketing. By 1900 the Canadian criminal law recognized the legality of combinations of workmen, the use of the strike and peaceful picketing. It specifically recognized the closed shop as a legitimate object, excepted unions from anti-combines laws and outlawed the use of violence and the breaking of contracts so as to impair the performance of essential services or to endanger life or property. On the civil side, Parliament sought to protect unions from liability for restraint of trade.

50. These statutes did not, however, involve the state in the actual processes of collective bargaining. Legislation to that end was enacted in 1900 to impose a scheme of voluntary conciliation for the purpose of protecting the public interest where industrial conflict in the form of work stoppages was perceived to be prejudicial to non-participants. The Act was of general application to manufacturing and service industries in Canada. It was followed in 1903 by the *Railway Labour Disputes Act,* imposing a scheme of conciliation on the railways under the sanctions of investigation and publicity.

51. The *Industrial Disputes Investigation Act* was passed in 1907. The statute required compulsory investigation and postponement of the right to strike and lock out, a policy that is unique to the Canadian scheme of collective bargaining. Postponement meant freezing terms and conditions of employment pending efforts at conciliation. If a conciliation board, composed of representatives of the parties and an independent chairman, failed to induce a "fair and reasonable settlement", the board's report, containing recommendations, was put in the public domain through publication. At that point the parties were restored to their common and civil law rights and duties.

52. The authority of Parliament to enact these laws was considered to rest in the general authority to enact laws for the peace, order and good government of Canada and in the enumeration of trade and commerce as a Parliamentary matter in section 91(2) of the *British North America Act.* The concept of national labour policy was shattered by the Privy Council judgment in the *Snider* case (*Toronto Electric Commissioners* v *Snider* [1925] A.C. 396 (P.C.)) which held that, insofar as labour relations has an independent existence, it falls within provincial jurisdiction under "property and civil rights" in section 92. Insofar as labour relations have a necessary relation to a particular industry, however, and where that industry falls within federal competence, Parliament may enact laws in respect thereof.

53. Federal jurisdiction based on the industry concerned may be established in a number of ways. First, the industry may be enumerated in section 91 as, for example, inter-provincial railways, telegraphs, shipping, and telephones. Second, the industry may fall within the federal residual power of section 91. Third, it may be a work or undertaking connecting a province with another or extending beyond the limits of a province (section 92(10)(a)). Fourth, it may be declared to be a work for the general advantage of Canada (section 92(10)(c)). Fifth, a state of emergency may shift the industry into federal jurisdiction, as happened in World Wars I and II. Sixth, section 94 provides a unique and limited, if not innocuous, avenue to federal intervention. Under this section Parliament may make provision for the uniformity of property and civil rights laws in Ontario, Nova Scotia and New Brunswick, but subject to the adoption of such federal laws by each provincial legislature. It is not settled whether this section applies by implication to provinces entering Confederation after 1867.

54. The law reports are replete with cases reconciling the competing claims of federal and provincial legislative competence. Sometimes the line is drawn on the basis of the nature of the industry (for example, shipping and navigation); sometimes by function or nature of the work being done (for example, stevedoring as distinct from shipping); sometimes by the degree of work and the object of the entrepreneur (for example, interprovincial trucking which, even if it is a work or undertaking, may or may not connect provinces or extend beyond the limits of a province so as to establish federal jurisdiction). A pervasive variable is the changing nature of the economy and of the social structure, factors which change the nature and needs of collective bargaining and add to the uncertainty of predicting the constitutionality of recommendations for changes in national labour policy and in the mechanisms and strategies for its implementation and operation.

55. The application of the original *Industrial Disputes Investigation Act* of 1907 was limited to employers of ten or more employees and to coal mining and public utilities. The *Snider* case grew out of an effort to apply the Act to street railway employees in the city of Toronto. The amendment that followed *Snider* restricted the application of the Act to "employment upon or in connection with any work, undertaking or business which is within the legislative authority of the Parliament of Canada" and "to matters not within the legislative jurisdiction of any province", and enumerated specific subjects marking the scope of its jurisdiction. In short, the federal statute was reshaped to limit it to industrial relations in industries that are national or inter-provincial in scope: in effect, very largely to service industries in the public utility field. The provinces then passed enabling legislation to make the federal law applicable within provincial jurisdictions.

56. In the 1930's some provinces began to extend the protection of the law to union organization and recognition, under the encouragement of the model set by the United States *Wagner Act* of 1935. But Parliament's hands were tied. It could not commit the country to the implementation of Interna-

tional Labour Organization conventions because the latter covered matters within provincial competence. In 1939, in an effort to protect the freedom of employees to form unions—that is, to exercise the primary freedom of collective bargaining, the freedom of organization—Parliament had to resort to the weight of criminal law to put down discriminatory practices of employers that theretofore contained no unlawful quality whatever. In order to implement national policy respecting unemployment insurance, an amendment to the *British North America Act* was enacted in 1940. Old age pension legislation was made a federal matter by amendment in 1951 and 1964.

57. In a system of free collective bargaining, employees must be free to organize into unions, have a right to require the employer to face them at the bargaining table through their union representatives and, in the event of failure to agree over terms and conditions of employment, have the right to refuse to work without permanently quitting their employment. The shortcoming of early Canadian legislation was that it concentrated on protecting the public from work stoppages without providing for the protection of employees to organize, negotiate and resort to economic sanctions. The policy was in reality to oblige postponement of the right to strike while efforts were made to conciliate the dispute. Union organization went unprotected; state intervention in negotiations was limited to trying to bring the parties together; and it had the consequence of putting constraints on economic sanctions.

58. A much more sophisticated scheme of state regulation of collective bargaining was adopted in 1944 with Order in Council, P.C. 1003. The emergency of World War II saw the rise of parliamentary and federal executive action that made federal policies apply to wartime industries. Although the right to strike was curtailed during the war, particularly in respect of wage negotiations, federal regulations sought to protect the freedoms of organization and negotiation and to bring stability to the administration of the collective agreement by prescribing a minimum term of one year and obliging the parties to settle their differences during its term without stoppage of work.

59. At the end of the emergency, legislative competence in the industrial relations field reverted to the distribution of powers described earlier. Efforts were made to maintain uniformity, and the *Industrial Relations and Disputes Investigation Act of 1948* did serve as a model for most provincial legislation.[8] Substantial variations have been engrafted onto provincial legislation during the two decades that the *Industrial Relations and Disputes Investigation Act* has remained in its original form.

60. Post-war statutes of Parliament and the provincial legislatures regulate the behaviour of employees, unions and employers in respect of organization, negotiation and resort to economic sanctions.[9]

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[8] The collective bargaining statutes of Quebec and Saskatchewan predated the model; the statute of Prince Edward Island followed much later.

[9] For details of the statutes of each legislative jurisdiction see, for example, A. W. R. Carrothers, *op. cit.;* Edith Lorentsen and Joel Bell, *op. cit.;* and C. C. H. *Canadian Labour Law Reporter* (current).

61. So far as organization is concerned, the statutes seek to protect employees from employer influence or interference by declaring that they must be free to join unions if they wish; unions are free to organize employees if they can. To this end the statutes prohibit employers from doing things, otherwise lawful, to discourage union organization and to interfere with legitimate union activities. Thus, most statutes prohibit an employer from discriminating against a person in his employment because of union activity, and outlaw a contract of employment which precludes union membership, but specifically preserves the employer's right to suspend, transfer, lay off or discharge an employee for proper cause. Some provinces prohibit an employer from changing terms of employment while a union's application for certification is being processed by the labour board, and seek to control electioneering respecting a representation vote on a union's application for certification. Most statutes also prohibit the employer from changing terms of employment during the negotiation or renegotiation of a collective agreement without the consent of the union.

62. In terms of the employer's interest, most statutes state a right in the employer to join an employers' organization and take part in its affairs, and prohibit organizational or other union activity on the employer's premises during working hours without the employer's consent.

63. The stage of negotiation is more difficult to regulate by statute than is the stage of organization. The object of negotiation is agreement; and agreement is essentially an act of volition, or at least a self-determined choice of the lesser of two evils. It cannot be imposed. The statutes therefore prescribe behaviour for the parties in the area surrounding the process of negotiation in order to induce in them a course of conduct conducive to bargaining and agreeing. Again, the statutes outlaw behaviour designated as unfair labour practices. They prescribe fairly complex procedures for identifying the union which the employer must recognize as the bargaining agent of the employees. Although voluntary recognition of a union by an employer is given statutory acknowledgment in some jurisdictions, it is not accepted in the federal statute, where a union gains a legal right to recognition only by establishing to the satisfaction of the Canada Labour Relations Board that a majority of employees have demonstrated their support of the union by taking out membership in it.

64. Here the Board must determine the unit of employees which the union is to represent. This determination can be critical to the issue of certification and to subsequent collective bargaining based on the certification. In most jurisdictions, in order to gain certification a union must show that a majority of the employees are members in good standing in the union and where there is doubt for any of a number of reasons as to the wishes of the majority of employees on certification, there is machinery for taking a representation vote of the employees.

65. The federal statute imposes on an employer and a certified union an obligation to "make every reasonable effort to make a collective agreement".

This is the extent of the statutory duty to bargain in good faith. It is supported, not by an elaborate jurisprudence on what must, may, or must not be bargained and on the legitimacy of strategies, but by a system of third party intervention to try to bring the parties into agreement where other inducements to agreement have not worked.

66. Where the parties fail to negotiate a collective agreement they must receive the services of a conciliation officer before they can strike or lock out. The task of the conciliation officer essentially is to assist the parties in negotiating a collective agreement.

67. Wide discretion is exercised across Canada as to whether a conciliation board should be appointed. Where the board fails to bring the parties into agreement it must, in most jurisdictions, recommend terms of settlement. Under the federal Act and in some provincial statutes the minister may appoint a commission of inquiry into industrial matters. In other provinces the power is in a public inquiries act or its equivalent.

68. In all jurisdictions the right to strike or lock out is deferred until machinery of negotiation and conciliation is exhausted. Where agreement cannot be reached, the union has recourse to the right to strike; the employer may lock out and may endeavour to keep his enterprise operating. Some legislatures have sought to regulate the behaviour of parties during a strike or lockout, and some provisions of the Criminal Code relate to this area of labour-management relations. The law relating to picketing and boycotting is considered at length in Part Five of this Report.

69. Where an agreement is entered into, it must remain inviolable during its term. Although the parties have some discretion under the federal Act and under some provincial statutes, the practice is to provide for arbitration of disputes involving the interpretation and application of the collective agreement. Generally, the arbitrator may award that the wrongdoer put matters right or pay damages or both. In addition, a particular event may give rise to liability to prosecution before a magistrate for breach of the statute. In some provinces the injured party may go to the labour relations board for a remedial order for an unfair labour practice. There may also be a suit in a court of law.

70. Under the *Collective Agreement Decrees Act* of Quebec the application of certain basic provisions in a collective agreement negotiated between employers' and employees' associations in a sector of an industry may be extended by decree to the industry as a whole within a specified area. The collective agreement is usually the product of voluntary recognition between the associations, a fact which limits accessibility to the labour board and limits the relevance of the *Labour Code*. The extended agreement is administered—in effect policed—by a Parity Committee representative of the parties of interest.

71. The legal framework dealing with labour relations in the Canadian jurisdictions requires a great deal of supervision. Parliament and the provincial legislatures have distributed the administration of these laws among

labour boards, responsible ministers, magistrates, arbitrators and the civil courts, each with appropriate powers and sanctions. In some instances they act on their own; in others a party of interest must put the machinery of justice into motion.

72. No two legislative jurisdictions distribute power and responsibility in precisely the same way. The general pattern is that labour boards are charged with administering the law respecting union recognition; the minister is concerned with administering the machinery of conciliation; magistrates hear charges of unfair labour practices, although this jurisdiction in a number of instances falls to the labour board; arbitrators hear grievances; and the civil courts hear cases relating to picketing and boycotting.

(2) The Parties of Interest

73. This section offers a brief analysis of the role of the major parties of interest in the Canadian industrial relations system.

A. ENTERPRISES

74. Central to the Canadian industrial relations system is a host of private, public and quasi-public enterprises operating in the economy. They take forms ranging from sole proprietorships, through various kinds of partnerships and private and public limited liability corporations, to all manner of government and private agencies. They cover anything from one- or two-employee operations to vast organizations employing thousands of workers in myriad occupations and locations. The conglomerate corporation stretches over many disparate industries and activities.

75. Whether profit making or otherwise, a major pursuit of most enterprises is the provision of goods or services at the lowest possible cost. This norm leads to two subsidiary objectives which tend to bring management into conflict with its employees. First, employers are not usually disposed to establish more generous terms and conditions of employment than are required to recruit and maintain a labour force necessary to operate the enterprise. Second, enterprise normally desires a relatively free hand to introduce changes designed to make operations more efficient. Here the dynamic and innovating employer often confronts the cautious and conservative union representing its security conscious constituency.

B. EMPLOYEES

76. A rising proportion of those gainfully occupied in the Canadian labour force is employed as distinct from being self-employed. Table 1 shows wage and salary earners as a percentage of the gainfully occupied labour force in each census year from 1911 to 1961. Over 80 per cent of those gainfully occupied in Canada are at present employed in one capacity or another.

77. The category of employee ranges over the spectrum of occupations. Traditionally the term "employee" was largely confined to skilled, semi-

TABLE 1

WAGE AND SALARY EARNERS AS A PERCENTAGE OF THE GAINFULLY OCCUPIED LABOUR FORCE

1911—1961

Year[1]	Wage and Salary Earners	Gainfully Occupied Labour Force[2]	Wage and Salary Earners as a Percentage of the Gainfully Occupied Labour Force
1911	1,628,273	2,723,634	60
1921	1,972,089	3,173,169	62
1931	2,570,097	3,927,230	65
1941	2,816,798	4,195,951	67
1951	4,085,151	5,285,953	77
1961	5,366,977	6,510,356	82

[1]The figures for 1911, 1921 and 1931 include those 10 years of age and over, 1941 statistics are based on those 14 years of age and over, 1951 and 1961 figures include those 15 years of age and over.

[2]The term "gainfully occupied" used from 1911–1941 differs from the "labour force" concept used in 1951 and 1961. For a discussion of the differences see H. D. Woods and Sylvia Ostry, *Labour Policy and Labour Economics in Canada* (Toronto, MacMillan, 1962) pp. 329–332. The proportions of wage earners to total workers for these years are still roughly comparable.

SOURCES: Dominion Bureau of Statistics, Census Division: *1931*, Vol. I, Table 82 and Vol. V, Table 1; *1941*, Vol. I, Chapter XII, Table 1; *1951*, Vol. V, Table 1; *1961*, Vol. III, 1-2, Table 4.

skilled and unskilled blue collar industrial workers and to junior level office and clerical personnel. There has been a growing realization that many other types of worker are in virtually the same position. The new technical workers who have made their appearance in the labour force over the past few decades have for the most part become employees in the conventional sense.[10] Even the professions find themselves confronted by institutional and organizational changes which are leading increasing numbers into an employee status. Moreover, those who remain self-employed in professions such as medicine find themselves operating under state administered plans which reduce the discretion inherent in their past income-determining powers. Many junior levels of management and supervisory personnel are as much employees as those they oversee. Although middle and senior managers of large corporate enterprises are members of the labour force in economic terms, at these levels it is difficult to distinguish between the legal personalities of the enterprise and its owners and those of its senior administrators.

78. What all manner of employees share is a common dependence for their continuing employment and income upon their employers, although the dependence may vary in large degree.

[10] For information on the growth of these new occupations see Canada Department of Labour, Economics and Research Branch, *Occupational Trends in Canada, 1931 to 1961*, (Report No. 1), Research Program on the Training of Skilled Manpower, (Ottawa, Queen's Printer, September 1963).

C. EMPLOYEE ORGANIZATIONS

79. Management derives its power in the labour market from its access to and control over capital resources. Business planning for production and sale of goods and services creates the demand for labour and gives to management control over jobs. Trade unionism was developed by workers as a countervailing instrument to confront the power of management in the labour market and in day to day administration at the work place. Each employee surrenders authority to the union to negotiate the standards by which he is to be governed at work.

TABLE 2

UNION MEMBERSHIP AS A PERCENTAGE OF THE NON-AGRICULTURAL PAID WORK FORCE IN CANADA

Selected Years 1921–1968

Year	Union Members	Total Non-Agricultural Paid Workers	Union Members as a Percentage of Non-Agricultural Paid Workers
	(Thousands)	(Thousands)	
1921	313	1,956	16.0
1926	275	2,299	12.0
1931	311	2,028	15.3
1936	323	1,994	16.2
1941	462	2,566	18.0
1946	832	2,986	27.9
1951[1]	1,029	3,625	28.4
1952	1,146	3,795	30.2
1953	1,220	3,694	33.0
1954	1,268	3,754	33.8
1955	1,268	3,767	33.7
1956	1,352	4,058	33.3
1957	1,386	4,282	32.4
1958	1,454	4,250	34.2
1959	1,459	4,375	33.3
1960	1,459	4,522	32.3
1961	1,447	4,578	31.6
1962	1,423	4,705	30.2
1963	1,449	4,867	29.8
1964	1,493	5,074	29.4
1965	1,589	5,343	29.7
1966	1,736	5,658	30.7
1967	1,921	5,953	32.3
1968[2]	2,010	6,100	33.1

[1]Includes Newfoundland from 1951.

[2]1968 Figures—Canada Department of Labour "News Release", Ottawa, September 4, 1968.

SOURCE: Canada Department of Labour, Economics and Research Branch, *Labour Organizations in Canada*, (Ottawa, Queen's Printer, 1967) p. xi.

80. Employee organizations are traditionally thought of as trade unions. Some other employee organizations are relatively ineffectual, such as some independent employee associations which are so management dominated as to be aptly described as "company unions". In contrast, numerous civil service associations and organizations of professionals shy away from using the term "union" but employ similar tactics to enhance the economic and related interests of their members.[11] Despite the growing importance of such bodies in the Canadian industrial relations system, this section is devoted to the more traditional labour movement.

81. In spite of their long history[12] and their recent growth to the two million membership mark, trade unions have organized only about one-third of the non-agricultural paid work force in Canada. The growth of unions for selected years from 1921 is shown in Table 2, which reveals that proportionally the labour movement is still below the high point it achieved in 1958. An approximation of where the Canadian labour movement stands in relation to its sister movements in a number of other leading industrial countries is shown in Table 3.

TABLE 3

UNION MEMBERSHIP AS A PERCENTAGE OF THE "LABOUR FORCE" AND OF THE "EMPLOYEE WORK FORCE" IN SELECTED COUNTRIES.[1]

Latest Year Available

Country	Year	Percentage of "Labour Force"	Percentage of "Employee Work Force"
Canada	1967	24.9	32.3
	1966	23.5	30.7
United States	1966	22.7	28.0
United Kingdom	1966	38.5	42.3
France	1966	16.1	36.1
West Germany (excl. W. Berlin)	1966	29.1	34.7[2]
Sweden	1966	59.0	70.3[2]
Australia	1966	42.5[2]	54.0
Japan	1966	21.3	35.0

[1]Inter-country comparisons should be used with caution as the definitions of "Labour Force" and "Employee Work Force" vary between countries.

[2]Estimates made in Task Force office using Labour Force-Employee Work Force ratios for the latest years in which both figures are available.

SOURCE: Prepared from data provided by Canada Department of Labour, Economics and Research Branch.

[11]See Shirley B. Goldenberg, *Professional Workers and Collective Bargaining*, Task Force Study; and J. Douglas Muir, *Collective Bargaining by Canadian Public School Teachers*, Task Force Study.

[12] See H. A. Logan, *Trade Unions in Canada*, (Toronto, Macmillan, 1948).

82. Union penetration in Canada varies widely between industries and regions.[13] Industrially, as shown in Table 4, union coverage ranges from 1 per cent in agriculture to about 60 per cent in forestry and transportation and utilities. Geographically, as shown in Table 5, British Columbia is the most highly unionized part of the country, and the Maritimes and the Prairies the least. In terms of legislative jurisdiction, however, the federal jurisdiction is more fully unionized than any of the provinces. The highest provincial percentage is 34, whereas the most closely comparable figure for the federal jurisdiction is 58 per cent.[14]

TABLE 4

UNION MEMBERSHIP AS A PERCENTAGE OF THE TOTAL PAID WORK FORCE BY MAJOR INDUSTRIAL GROUP

1967

Industry	Union Members (Col. 1)	Paid Workers (Col. 2)	Union Members as a Percentage of Paid Workers (Col. 3)
Agriculture	865	71,000	1
Forestry	43,907	74,000	59
Mines	57,929	112,000	52
Manufacturing	758,802	1,701,000	45
Construction	209,558	366,000	57
Transportation and Utilities	361,605	605,000	60
Trade	78,416	989,000	8
Service	169,382	1,453,000	12
Total	1,680,464	5,371,000	31

NOTE: The data used in this table are not fully comparable with those employed in the preceding tables because the figures for paid workers by major industrial group are gathered on a different basis than those for the total non-agricultural paid work force.

SOURCES: Column 1—Canada Department of Labour, Economics and Research Branch, *Industrial and Geographic Distribution of Union Membership in Canada in 1967*, (Ottawa, Queen's Printer, 1967).

Column 2—Dominion Bureau of Statistics, *Special Table* No. 9603–101.

83. Although unions in Canada are relatively strong in certain sectors such as construction, mining and manufacturing, there is considerable scope for growth in a number of industries, particularly in white collar occupations, in banking and finance and in much of retailing.[15] Despite the inroads unions have made in the public service, considerable potential for growth remains in this field as well.

[13] Canada Department of Labour, Economics and Research Branch, *Industrial and Geographic Distribution of Union Membership in Canada in 1967*, (Ottawa, Queen's Printer, 1967).

[14] From data made available by the Canada Department of Labour, Economics and Research Branch.

[15] See Frances Bairstow, *White Collar Workers and Collective Bargaining*, Task Force Study.

TABLE 5

UNION MEMBERS AS A PERCENTAGE OF TOTAL NON-AGRICULTURAL EMPLOYEES BY MAJOR REGIONS

1967

Region	Union Members (Col. 1)	Non-Agricultural Employees (Col. 2)	Union Members as a Percentage of Non-Agricultural Employees (Col. 3)
Atlantic	120,607	573,000	21
Quebec	569,430	2,027,000	28
Ontario	721,581	2,596,000	28
Prairies	198,161	1,011,000	19
British Columbia	240,228	696,000	34
Total	1,850,007	6,903,000	26

NOTE: The data used in this table are not fully comparable with those employed in the preceding tables because of the use of non-agricultural employees as the only available employment base for the purpose of regional breakdowns.

SOURCES: Column 1—Canada Department of Labour, Economics and Research Branch, *Industrial and Geographic Distribution of Union Membership in Canada in 1967*, (Ottawa, Queen's Printer, 1967).

Column 2—Dominion Bureau of Statistics, *Special Table* No. 9712–516.

84. Reflecting for the most part the organizational patterns of the industries in which they operate, unions in Canada have assumed a wide variety of structural forms. These range from specialty craft unions, particularly in the construction and printing trades, to composite industrial unions, as in much of secondary manufacturing. Between lie various forms such as multi-craft unions.

85. Examination of the structure of the Canadian labour movement is complicated by its lack of unity. Of all unionized workers in Canada, 75.5 per cent belong to unions which are affiliated to the Canadian Labour Congress (CLC); another 10.3 per cent belong to its major Quebec-based rival, the Confederation of National Trade Unions (CNTU); the remainder is divided among a few relatively small splinter groupings and a number of independent unions such as the Teamsters. The CNTU is organized into 13 major industrial federations, each divided into locals representing different areas, firms, plants, crafts, or groups within its general jurisdiction. Although the CNTU has more power over its federations than the CLC has over its affiliates, the latest CNTU convention decentralized many of its consolidated services.

86. The organization and structure of the labour movement affiliated to the CLC is not easily described in a few words. The complexity of the

subject is suggested by Chart 2.[16] Several features of this organization and structure merit emphasis. First, a large number of union organizations are linked to the CLC, including 22 national unions, 93 international unions, 164 directly chartered locals, ten provincial federations of labour and 121 local labour councils.[17] Second, the national and international unions affiliated to the Congress assume a wide variety of forms. Third, although the Congress has ultimate power over its provincial federations of labour, local labour councils and directly chartered locals, its power over the national and international affiliates is limited. Fourth, despite the growing influence of the central organizations at the national, provincial and local levels, the affiliated unions remain sovereign in most areas, and certainly in their collective bargaining activities. Fifth, to a major extent historically, and to a lesser degree recently, the fact that international unions represent 78 per cent of the membership in unions affiliated to the Congress has had a marked effect on its affairs. Sixth, within the national and international affiliates of the Congress the division of powers between local unions, regional units and national organizations varies in theory and practice. Seventh, another dimension to this division of responsibilities arises within the international affiliates between their United States headquarters and various Canadian levels of the union. Eighth, further complicating the situation are a growing number of inter-union groupings, such as the Canadian Railway Labour Executives' Association and the building and construction trades councils, created to respond to common problems of unions operating in the same general industry or area.

87. It is hazardous to generalize about the organization and structure not only of that portion of the labour movement which is linked to the CLC but also of the movement as a whole. Because of the pluralistic nature of the society from which unions spring, it is almost as risky to generalize about the ideology, short run goals, long run strategy and immediate tactics of organized labour.[18]

88. Unions share one thing: their commitment to "more" for their members. In this basic sense there has been no serious departure from what became the rallying cry of the United States labour movement after Samuel Gompers assumed the presidency of the American Federation of Labor. But here, as in the United States, there have been differences in tactics. Although the dominant approach has been through collective bargaining, varying degrees of emphasis have been placed on political action. Again, as in the United States, many unions in Canada have sought only limited gains through political action, such as improved legislative support for collective bargaining. Largely because of their limited objectives they have refrained from

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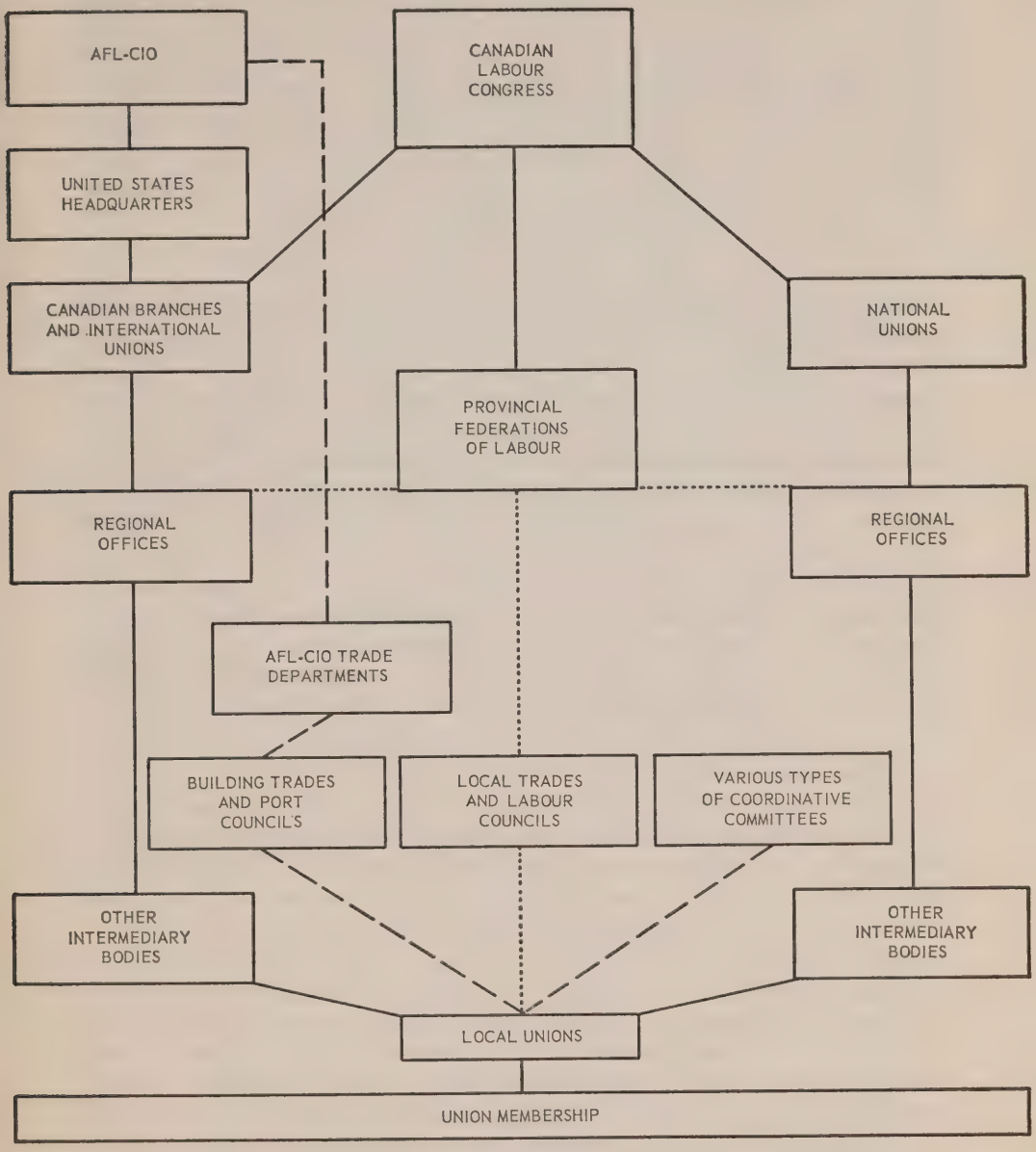
[16] For further discussion see John Crispo, *op. cit.*, especially pp. 166-178.

[17] The source of these figures is the Canadian Labour Congress. Figures are as of September 1968.

[18] Gérard Dion (ed.), *Le syndicalisme canadien: une réévaluation,* (Québec, Les Presses de l'Université Laval, 1968).

Chart 2

THE STRUCTURE OF THE CLC-BASED SEGMENT OF THE CANADIAN LABOUR MOVEMENT



——— Obligatory Links
- - - - - - Voluntary Links
— — — More Specialized Links

Source: Adapted from John H.G. Crispo, International Unionism: A Study of Canadian-American Relations, (Toronto, McGraw-Hill, 1967), p. 167.

supporting any particular party; rather, they have tended to confine themselves to the Gompers approach of "rewarding one's friends and punishing one's enemies".

89. An increasing number of unions have, nevertheless, involved themselves in the political life of the country. Either because collective bargaining could not achieve all they desired for their members or because of broader ideological commitments, many unions have become active political participants to the point of backing the party of their choice. Whether in this or some other manner, a large number of unions in this country have gone beyond the more conservative role of collective bargaining agents to become instruments of social transformation—radical or otherwise.

D. "DEPENDENT CONTRACTOR" ORGANIZATIONS[19]

90. In some cases unions have been formed to represent a type of occupation distinct from those described earlier. Appropriately called "dependent contractors", this category embraces workers whose income is dependent upon their share of the total catch or returns on that catch, as in the case of some fishermen; upon the price they are paid per load, as in the case of many owner-operators of trucks; upon a percentage of gross revenues, as in the case of many lunch-wagon operators; or upon some other variable. However one describes their activities, they sometimes band together to better their position *vis-à-vis* those contracting for their services or buying their products. To the extent that the services or products entail a labour content, these activities are clearly analogous to those engaged in by employees under the name of collective bargaining. To the degree that their collective action impinges on the product market, however, they can clearly affront the country's anti-combines policy.

E. EMPLOYER ORGANIZATIONS

91. Employer associations often are formed for purposes unrelated to industrial relations; even in the industrial relations field they may play a number of roles. Organizations such as The Canadian Manufacturer's Association and The Canadian Chamber of Commerce do not take a direct or active part in collective bargaining; rather they serve as lobbies and spokesmen for employers in the general field of industrial relations. At other levels, employer organizations play a more active role in respect of their members' relations with organized labour. In Quebec, for example, *Le Centre des dirigeants d'entreprise* concentrates on the education of its members, drawn from industry in general, in all facets of industrial relations. Some associations, such as the Canadian Construction Association and the Canadian Pulp and Paper Association, act primarily as clearing-houses for pertinent information. Still others, such as the Railway Association of Canada, serve to

[19] See H. W. Arthurs, "The Dependent Contractor: A Study of the Legal Problems of Countervailing Power", *The University of Toronto Law Journal*, (Toronto, University of Toronto Press), Vol. XVI, No. 1, 1965.

co-ordinate their members' activities in collective bargaining. Finally, there are employer associations which formally act as bargaining agents for their members. Such associations are most prevalent in printing, clothing, construction and trucking, where there are large numbers of relatively small firms confronted by a common union or group of unions. In a few cases the association handles only the bargaining, and the members sign individual collective agreements. In most cases, however, the agreement is negotiated and signed by the association on behalf of its members. Some associations even take over the administration of the agreement.

F. LEGAL COUNSEL AND CONSULTANTS

92. All parties in the Canadian industrial relations system may draw on outside expertise. When legal questions are involved, reliance is usually placed on legal counsel. Otherwise the parties normally draw on specialist consultants, who are becoming increasingly common in labour relations. Some are drawn from private consulting firms, others from co-operative employer sponsored undertakings. They may provide assistance ranging from the handling of collective bargaining to the implementation and administration of complex fringe benefit programs. Although both types of participants in the industrial relations system act as agents of other parties of interest, they sometimes have an independent impact.

G. GOVERNMENT

93. Government functions at different levels and in different capacities in the Canadian industrial relations system. Provincial jurisdiction is much broader than the federal, in terms of its labour force coverage as well as its control over "property and civil rights". Regional, county, municipal and local governments have a role to play in the system, if only as employers.

94. Broadly, the role of government in industrial relations, as in every other sphere of activity, is as custodian of the public interest. Clearly the federal government has a major role in keeping the economy growing in a manner calculated to achieve various economic goals. We turn to this matter in Part Three.

95. Attention at this point is confined to the roles of the state which have a more direct bearing on the industrial relations system. Government has a major part, both as determiner of the legislative framework of rights and responsibilities within which the parties conduct their relations and as agent for resolving disputes between labour and management.

96. In addition, government at all levels in Canada has long maintained limited or general labour standards programs for its own contract work or for industry in general. Although the coverage of such standards legislation is not complete, and it seldom affects other than marginal employers, its impact has become potentially more controversial as it has been extended to issues other than wages. Such legislation now ranges from hours and fringe benefits to human rights and safety codes.

97. The increasingly important role of the state as employer should not be neglected. As more and more workers find themselves in public employment, the practice and impact of collective bargaining in the public service will require increasing examination.

H. THE PUBLIC INTEREST

98. There is no single public interest with respect to collective bargaining but rather a series of competing public interests. There is a public interest, for instance, in the preservation of the right to associate and to act collectively. Against this must be weighed the public interest in the continuation of essential services in the face of a labour-management impasse.

99. The public interest in various attributes and manifestations of the Canadian industrial relations system is covered in our observations and recommendations in Part Five, where an attempt is made to balance the many competing ingredients in an acceptable and workable manner.

(3) The Processes of Interaction

100. The processes of interaction between the various parties in the Canadian industrial relations system take place in the labour market, in employer discretionary powers and personnel administration, in the process of collective bargaining, and in legislated labour standards.

A. THE ROLE OF THE LABOUR MARKET[20]

101. The labour market is only one of a series of interdependent markets which in the aggregate make possible the operation of a mixed enterprise economy. The labour market serves as a mechanism in which buyers and sellers of labour can accommodate their common and competing interests. The result of this interaction is a hierarchy of wages and salaries that allocate the available labour force in a manner consistent with a similar operation of all other factor and product markets.

102. The imperfections in the labour market, such as inadequate knowledge in the hands of employers and workers, have been partially overcome by public and private counselling and placement agencies, including the Canada Manpower Service. Although many deficiencies remain in the labour market in spite of these efforts, over time it serves to distribute labour and income in a fashion that no other mechanism could easily match. The continuing reconciliation of the interacting forces of supply and demand which is produced by the labour market leads to a relative distribution of workers and their incomes between different areas, industries, employers and occupations which is not readily undone.

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[20] For an account of the history of the labour market, see H. C. Pentland, "The Development of a Capitalistic Labour Market in Canada", *Canadian Journal of Economics and Political Science*, November 1959, pp. 450-461.

B. EMPLOYER DISCRETION AND PERSONNEL ADMINISTRATION

103. Employers often have a range of discretion within which they may operate in setting wages and other terms and conditions of employment, because of imperfections in the labour market and the time required by the forces of supply and demand to take effect. Employers must reconcile their own internal wage and salary structures with external market forces, but they can reduce the need to accommodate the two by building in benefits which tend to tie workers to their employment. This strategy has limitations.

104. Personnel administration is the name traditionally given to the process by which management formulates and implements its manpower and human resource policies. Some small enterprises have no personnel department; they simply accept what the market dictates or the union negotiates. Others have a carefully worked out personnel policy without having a specialized personnel officer. Many large corporations have complex personnel departments that handle everything from preliminary interviewing of job applicants and career counselling of regular employees through manpower planning and fringe benefit administration to salary adjustments and merit rating plans.

105. Where all or part of the work force is organized, a special industrial relations unit is usually created to assist in negotiations and to handle continuing relations with unions. How this activity fits into the complete personnel function varies from case to case. It can present difficult administrative problems where the employer wishes to maintain common personnel practices throughout his enterprise but deals with a union or unions only in part of it.

C. COLLECTIVE BARGAINING

106. Where workers are dissatisfied with what the market or their employer suggests is an adequate return for their services, they often seek to form common cause to improve their situation. Through unionization they compel those employing their services to give them a voice in the determination of their terms and conditions of work. Collective bargaining is the process by which groups of organized workers and those desiring their services seek to resolve their differences through reason, the threat of economic conflict or actual conflict. As a result of collective bargaining, more and more issues are subject to joint determination and management's unilateral decision-making power is being reduced accordingly.

107. The collective bargaining process has adapted itself to an increasing range of normative and procedural issues. Normatively, negotiations now cover everything from wages, hours and working conditions to elaborate fringe benefit and income and job security plans. Procedurally, collective bargaining has led to the introduction of grievance and many other procedures, including job posting and advance notice for layoffs.

108. An obvious feature of the collective bargaining system is its limited coverage of the labour force. The scope of the process varies with the

manner in which the labour force is delineated and with the ways in which collective bargaining and trade unionism are defined.

109. The term "labour force" can be interpreted in a variety of ways.[21] At its broadest—the "total labour force"—it may be described as the number of persons willing and able to work. More meaningful for our purpose is the "total non-agricultural paid work force" which is the total labour force less agricultural, self-employed and unpaid workers. Narrower still, reference may be made to the labour force of a region, locality, industry or plant. Other possibilities include labour force breakdowns by occupation, skill or sex. Finally, there are frequent references to the distinction between blue and white collar workers, a distinction not always easily drawn.

110. The extent of collective bargaining is not the same as that of trade unionism, although they tend to cover the same groups of workers. In practice collective bargaining is more all-embracing than trade unionism. First, there are many collective agreements which apply to non-union as well as union members. Under the prevailing concept of exclusive bargaining rights, this coverage is mandatory within designated bargaining units. Second, the *Collective Agreement Decrees Act*[22] in Quebec provides for decrees under which certain terms and conditions in a collective agreement may be made applicable to all establishments in a given jurisdiction, including the unorganized. Less stringent legislation of a similar kind exists in several other jurisdictions. Less formally, the results of collective bargaining also affect many other workers whose employers seek to emulate union standards.

111. As indicated earlier, the term trade union also poses some difficulty. Conventionally it is limited to organizations of workers acting collectively to protect and improve their conditions of employment. In that sense it embraces virtually all groups, including most of the non-affiliated public employee associations at the federal and provincial levels, and many associations of professional workers, such as teachers and nurses[23], who have traditionally refrained from referring to themselves as unions though they may operate in a similar manner. Their contribution to the proportion of the labour force already covered by collective bargaining can only be estimated because data on the extent of their participation in that process is limited.

112. At least two other groups add to the total. The first covers dependent contractors as described above; the second embraces independent practitioners in professions where they join together to agree on a fee schedule or the equivalent. Their adherence to the schedule may vary; yet there is an affinity between a doctor agreeing with his colleagues on what their services are worth and a local union of electricians negotiating their hourly rate. It is hard to justify the view that one group is participating in

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[21] For example, "The civilian labour force is composed of that portion of the civilian noninstitutional population 14 years of age and over who, during the reference weeks, were employed or unemployed." See Dominion Bureau of Statistics, *The Labour Force,* (Ottawa, Queen's Printer, monthly).

[22] R.S.Q., 1964, c. 143.

[23] See Shirley B. Goldenberg, *op. cit.* and J. Douglas Muir, *op. cit.*

collective bargaining while the other is not. Again, however, one runs into data limitations when attempting to ascertain how much independent practitioners would add to the proportion of the labour force covered by collective bargaining.

113. Even if all these groups were totalled, it is unlikely that they would surpass 45 or 50 per cent of the non-agricultural work force. There will doubtless always remain large numbers of workers not covered by collective bargaining. This is the situation in virtually all countries where there is a free labour movement. In the exceptional case of Sweden, a high proportion of the labour force is covered by collective bargaining. In most other countries, however, the proportion is much closer to that prevailing in Canada.

D. LABOUR STANDARDS LEGISLATION[24]

114. Labour standards have been designed for a number of purposes and have performed with varying degrees of effectiveness. They range from general minimum wage programs to special protective measures aimed at hazardous employment practices in particular occupations. We limit our attention for the most part to wage and hour standards, since these are the areas where such programs are most prone to impinge on the results of collective bargaining, a subject to which we return in Part Four.

115. Wage and hour standards are usually designed to serve one or more of three basic purposes. First, they may be designed as part of an anti-poverty program to ensure workers a minimum standard of living without being exploited by having to work unduly long hours. This was probably the main purpose of most early wages and hours legislation. This purpose was later combined with that of eliminating "unfair" competition if only to garner employer support for the legislation. Lately a new and more sophisticated purpose has been added. The pressure of higher standards can be used to improve productivity and the rate of growth by forcing marginal employers to use their labour forces more efficiently or go out of business. In the latter event, the result could be unemployment in the absence of complementary fiscal, monetary and manpower programs to facilitate the movement of displaced labour into other more productive undertakings.

116. The mixture of objectives which underlies standards programs in Canada is reflected in the variety of approaches within and between the different jurisdictions. Most jurisdictions now have a variable or general minimum wage program that is presumably intended to provide a basic minimum standard of living. But none of the general minimum wage standards and few of the variable ones meet the minimum family budget needs suggested by recognized social welfare agencies. Failing this objective, a

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[24] See Gérard Hébert, S. J., "Labour Standards Legislation", H. Carl Goldenberg and John H. G. Crispo (eds.), *Construction Labour Relations,* (Ottawa, Canadian Construction (Association, 1968), pp. 230-303; and Mamhood A. Zaidi, *A Study of the Effects of the $1.25 Minimum Wage Under the Canada Labour (Standards) Code, Impact of Minimum Wage and Industrial Standards Legislation,* Task Force Study.

more modest purpose of such legislation might be described as the prevention of severe exploitation. If an acceptable minimum standard were the goal, there would be something akin to an escalator clause built into the program to keep the minimum increasing at least in line with the cost of living. Yet no such feature is present in any of the general minimum wage legislation, whether comprehensive or variable in its application.

117. An objective beyond the maintenance of a bare minimum standard is inherent in the industrial standards programs of most provinces and the collective agreement decree system in Quebec. In both systems the purpose clearly includes the protection of employers paying something approaching union rates. Under the industrial standards programs in the provinces, rates are publicly set for an industry upon the request of and after consultation with employers and unions affected, and are then enforced with varying degrees of rigour by government inspectors. In addition, under the decree system in Quebec the role of the private parties is greater in determining the standards and in policing the system. Under each decree there is established a parity committee, composed of the interested parties, which can levy a payroll tax against both workers and employers to provide a fund with which to employ auditors and inspectors to enforce the rates and other conditions specified in the decree. As a result, under the Montreal construction decree system alone there are more auditors and inspectors in the field than there are employed for the entire standards program in most of the other provinces. The parity system leads to comparatively higher standards that are relatively better enforced than in most other jurisdictions. It also has a number of desirable indirect effects, especially in the construction industry where subcommittees of the parity committees are doing effective work in everything from apprenticeship and safety to the settlement of jurisdictional disputes.

(4) The Results of the System[25]

118. The results of the Canadian industrial relations system take various forms, depending on the processes of interaction from which they flow. Primary attention in this Report is devoted to the operation of the collective bargaining process and to the outcome in the form of terms and conditions of employment, obtained with or without a work stoppage, and in the form of such stoppages themselves. Rarely does a strike or lockout end in an unresolvable impasse.

119. Unions may be looked upon as power centres concerned with advancing the welfare of their members. The basic objective of unions in industry is improved working conditions of those they represent. The principal method is collective bargaining with employers. Union power in the extreme is manifested through the concerted withdrawal of labour from the employer—the strike. Management's equivalent is its capacity to withstand a

[25] See S. Jamieson, *Toil and Trouble: Labour Unrest and Industrial Conflict in Canada, 1900-1966,* Task Force Study; and John Vanderkamp, *The Time Pattern of Industrial Conflict in Canada, 1901-1966,* Task Force Study.

strike and to lock out its employees. But the power of both sides, and especially the union, is felt in the bargaining process even without a work stoppage. The fact that a strike or a lockout is a possibility induces unions and management to try to reach agreement. The cost of settlement is set against the calculated cost of a work stoppage. Part Four provides an analysis of the role and cost of work stoppages within the total industrial relations system. As expensive as they may seem, they play an indispensable part in the present collective bargaining process. The threat of a stoppage or an actual stoppage may be needed to induce the parties to narrow and eventually resolve their differences.

120. Whatever may be the verdict of those who judge the behaviour of the parties, and particularly unions, the logic of their behaviour is clear. On the union side, the power to negotiate effectively derives from the power to inflict economic damage on the employer and those who are allied with him. Few unions strike frequently, many strike infrequently, and some rarely. Yet the right to do so, and the possession of the organization and support to do so, are of prime importance in the bargaining relationship.

121. Terms and conditions of employment produced by collective agreements are of interest from many points of view. Their costs are of concern because of their potential impact on inflation and on the reconciliation of various national economic goals. These relationships are examined in Part Three. A number of other ramifications of the substantive results of collective bargaining are examined in Part Four.

(5) The Internal Interdependence of the System

122. There is a flow of influences throughout the Canadian industrial relations system (see Chart 1) starting, basically, with a host of environmental features which play upon the parties of interest and their various processes of interaction. The results feed back into the system at many points, so as to lead to further accommodation. Adjustments at any one point lead to additional adjustments elsewhere; there is constant change. Any tampering with the system must be based on an appreciation of the implications of such adjustments, not merely at the point of impact but everywhere in the system.

COLLECTIVE BARGAINING IN A CHANGING WORLD

123. Any lasting institution in society is designed to accommodate change. The question respecting collective bargaining is whether the kind of change it is designed to accommodate is the kind it will confront. In an evolving environment, in which the pace and quality of change are reasonably foreseeable, we are confident that collective bargaining can adjust and can survive. The recommendations we make in Part Five are for the most part intended to facilitate a matching evolution of the system itself.

124. Nevertheless, collective bargaining must be judged by its function. It is a form of strategy in a mixed enterprise economy for the protection of the interests of labour. As such it is a means to an end, not an end in itself. If the system of collective bargaining should be weighed and found wanting because of limitations inherent in the system or because of defects that have too long gone uncorrected, society may reject the system as unsuitable for its purpose.

125. One cannot have the same confidence in the survival of collective bargaining on the postulate of a radically changing environment, of which there are portents.

126. In the normal course of social and economic growth in North America, change is pervasive and the rate of change is accelerating: in technology, organization, administration, urban development, communications, education, and endless other areas. Significant change can be observed in the mixed enterprise system. Economic planning by the state is steadily gaining respectability, and with acceptability it is gaining pace. Change in the nature of the corporation is a subject of topical comment. The concept of the "good corporate citizen" and other long-range considerations are making the goal of profit maximation less clear than it once was. As a result, there are signs that the giant North American enterprise may be becoming more akin to government in both attitude and function. Moreover, foreign experience—including nationalization in the United Kingdom and the intensive participation of labour in the government of the coal and steel industry in West Germany and general growth in the concept of co-determination—provides further examples of the potential transformation of enterprise.

127. These changes may well work a transformation in the nature and role of employment, trade unionism and collective bargaining, particularly in relation to decision making. Long range economic planning will increase in the private and public sectors of the economy, and will therefore limit the range of choices available in traditional styles of collective bargaining. The collective bargaining system, if it is to survive, must change to reflect the nature and functioning of the employer and the environment. If collective bargaining is to prevail as a significant instrument in the industrial relations system in this evolving environment, the system may have to become one of the mechanisms in the managerial decision making process. It may even become a party to the decision itself, as in European systems of co-determination where decisions are a joint responsibility. In reality there is co-determination now in North America, in the fields of wages and conditions of work. As collective bargaining changes, so must trade unionism. Business unionism may have to be replaced by institutions whose philosophies reflect the new tasks of collective bargaining. The challenge will be to integrate free collective bargaining with industrial and national planning, a challenge which has not been met in socialist countries.

128. A major force behind the drive for acceleration in change is the rising expectation about what society can and should do, based on an intolerance arising from a growing, pervasive awareness of the nature and potential

of the individual and of society. These expectations relate not only to material demands, with derivative pressures for economic growth, the harmonization of competing economic goals and the distribution of wealth, but also, and perhaps more forcefully, to demands for correcting social and economic injustices.

129. The accelerating rate of change is challenging basic concepts from which collective bargaining draws its justification. In our rationalization, collective bargaining is accepted as a natural concomitant of enterprise and derives its justification from fundamental western values captured in the expression "freedom under the law". A change in concepts of fundamental values may cause society to reject collective bargaining as an anachronism. The values which it now seeks to protect may be forfeited or may be pursued by other means. As trade unionism is an instrument of social transformation as well as an agent of collective bargaining, the threat to it may not be as great; yet part of it may fail with collective bargaining.

130. In the midst of observable dynamics of change, many reformists and agents of reform view North America as an industrial society in which democratic forms of government are dominated by a lethargic pluralism. In Canada, pluralism and industrialism are to an extent indigenous yet to a substantial degree are influenced by or dictated from the United States. The industrial political economy has produced in North America the highest standard of living and the highest level of mass education in the world. At the same time the pluralistic society has tended to become rigid in its tolerance of individualism and the centres of interest which compose that society, and finds it more difficult to respond to demands of the general interest that are not advanced or supported by the proponents of special interests. These characteristics and attitudes in a changing society are calculated to induce social unrest. The result is social turbulence new to democratic government, economic affluence, knowledge and, if not peace, at least the absence of global war.

131. One of the characteristics of contemporary social discord, be it cause or by-product, is a growing impatience with and contempt for the rule of law, and an increasing dismissal of the relevance of the tradition of freedom under the law. This impatience and contempt is even directed against liberal democratic forms of government. The concept that government is subordinate to the governed, that authority takes its legitimacy from the will of the people and can lose it by the will of the people, provides philosophical justification for revolt against a form of authority that fails in its purpose as a means to the attainment of fundamental human rights. It is not the absence of human rights that appears to lie at the root of current unrest, but disparity in their availability and a sense of frustration that the social, economic and political institutions of society are not pressing effectively for the removal of the disparities. These political and social philosophies and attitudes in contemporary society are expected to work changes of considerable dimension.

132. Society at large is slow to change; it seems to need plateaus of predictability to regroup and generate energy and ideas before the next surge in its upward drive for freedom from imperfections in human existence. On these plateaus the *status quo* offers a strong appeal of stability. Yet, the *status quo* stands on one side of a widening gap in ideas and values. Opposite is an *élan* for change: to improve society and the social environment, to do and be better than one's elders, to prove oneself to oneself and one's peers, to live in and leave behind a better world. Revolutions in history have been creatures of their environment. This limitation is unaccepted today; elements in society are prepared to create the environment. Some seem to be content to separate from a culture which they cannot accept and to seek to live in another of their own choosing and making. Others appear to be content with nothing short of rapid social transformation. They want to remove social, economic and political disparities and perceived hypocrisies of self-interest in private enterprise, private ownership of property and the institutionalization of man. They present new or newly stated values in non-competitive interpersonal relationships, in matters of conscience, and in the purpose or lack of purpose of human life. These values are competing with economic and other more traditional or conventional values, including the work ethic, the profit motive and the norm of efficiency. To the reformists the rule of law is easily sacrificed as a self-serving instrument of the *status quo*, as a drag on social change, and as an unnecessary and unwanted channeler and conditioner of human conduct.

133. Yet in the struggle between authoritarian power and freedom under the law, the rule of law has much on its side. It is implicit in any society. The issue is not whether society will have rule of law but what kind of law it will have. The ideal of freedom under the law—an important value judgment as to how society should be ordered—is a fundamental heritage of western society. But freedoms are not absolute; they cannot be and co-exist. They need channeling; and liberal democratic traditions have been accepted as the most appropriate means of making the important, sophisticated choices that determine the limits of freedoms. Institutions are pervasive in society, and in a pluralistic society seek to protect their interests, their property and their existence. Coupled with resistance to change is a desire for order in the process of change and an implicit respect for authority.

134. Confrontations in myriad forms and degrees are inevitable; social change will occur. The manner and nature of change may determine if collective bargaining will survive as an instrument for the pursuit of dynamic social and economic justice.

PART THREE

COLLECTIVE BARGAINING AND OTHER PUBLIC POLICIES

COLLECTIVE BARGAINING AND OTHER PUBLIC POLICIES

135. The purpose of this Part of the Report is to examine the relationship between collective bargaining and many of Canada's other socio-economic-political goals, policies and instruments. Central to this appraisal is the problem of reconciling collective bargaining with various ends and means which themselves are often in competition with one another. Of particular concern is the impact of collective bargaining on the trade-off between full employment and stable prices. This examination leads to an analysis of the possible causes of and remedies for inflation with special reference to the role of collective bargaining. We offer relatively little new information[1]; we rely heavily on an appraisal of existing knowledge.

136. Our treatment of this area is lengthy for two reasons. First, it is widely believed that trade unions and collective bargaining bear much of the responsibility for the inflation Canada has experienced in recent years. Second, the relationships are complex and are not easily clarified. To do justice to both the public concern and organized labour's right to a fair appraisal, we considered it necessary to examine the matter in considerable detail.

137. Our task in this Part has been made difficult by two obstacles. A major handicap arises from a lack of any central and definitive statement of Canada's objectives and purposes. We have therefore drawn on a variety of sources for the identification and statement of those goals and policies that appear to us to have priority. A second and more troublesome problem arises from deficiencies of data and technique that continue to plague the kinds of analyses that are required to sort out cause and effect in the interrelationships. These deficiencies show why dogmatic answers are hard to defend.

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[1]The Task Force undertook one major research project in this area. See Grant L. Reuber, *Wage Determination in Canadian Manufacturing Industries,* Task Force Study.

THE MIXTURE OF ENDS AND MEANS

138. Advanced industrial countries are taking an increasing interest in national goal setting and in predetermined as distinct from *ad hoc* policies for the attainment of their goals. At one extreme, national planning takes the form of a highly bureaucratic and regimented process involving government delineation and control over both ends and means. At the other extreme such action deals only with broad long-term objectives and leaves much of the detail to the free play of market forces. The Canadian model, which comes much closer to the latter than to the former, displays a wide variety of ends and means.

(1) The Range of Objectives

139. There is such a variety of goals in a country like Canada that one cannot begin to list them all, let alone do justice to them. What follows is a catalogue of some of the more general of these objectives as we interpret them. Among the more specific goals we have omitted are some as significant as industrial peace. Yet this is one end, as we indicate in Part Four, that appears to be looming larger in the public's scale of priorities.

140. Canada's ideological and political foundations are considered in Part Two. We note no lessening in the country's continuing adherence to the fundamental western precept of the dignity and worth of the individual human being. Nor do we detect any serious loss of faith in the liberal democratic process except perhaps among some of the disenchanted youth of the new left. Otherwise the country's ideological and political commitments run deep and there is a widespread desire to preserve and extend them.

141. On the economic side there appears to be less interest in the nature of the existing system and more concern over its performance. In interpreting its terms of reference the Economic Council of Canada has enunciated five goals that basically are economic in nature, although at least the fifth has important social implications as well. As stated in its First Annual Review[2], these five objectives are full employment, a high rate of economic growth, reasonable stability of prices, a viable balance of payments, and an equitable distribution of rising incomes.

142. In its annual reviews the Economic Council has elaborated on the meaning of these goals. Of the first, full employment it has said:

> In the light of careful studies, we have concluded that a 97 per cent rate of employment, or a 3 per cent rate of unemployment, of the labour force would constitute a realistic objective to be aimed at over the balance of the 1960's and that economic policies should be actively directed towards the achievement of this target.
>
> Our target of 3 per cent unemployment, or 97 per cent potential employment of the labour force in 1970, recognizes that in a complex and dynamic industrial economy, a minimal amount of frictional and structural unemployment is normal and natural.[3]

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[2] Economic Council of Canada, *First Annual Review: Economic Goals for Canada to 1970*, (Ottawa, Queen's Printer, 1964), pp. 7-8.

[3] *Ibid.*, p. 38.

143. Reasonable stability of prices has been described as follows:

> After careful consideration, we have assumed that if annual average rates of changes in prices and costs to 1970 can be contained within the limits of the ranges of movements over the decade from 1953 to 1963, this would represent the attainment of a satisfactory degree of price and cost stability. Over the past decade, for example, the average annual increases in consumer prices and in prices of all goods and services produced in Canada were 1.4 per cent and 2.0 per cent, respectively, . . .[4]

144. The Council had defined a high rate of economic growth in these terms:

> . . . The achievement of our potential output target for the economy by 1970 calls for an average advance of 5.5 per cent per year in the volume of total production of goods and services from the actual level in 1963. This is the rate of expansion in output which we believe to be attainable on the basis of our projections of the growth of the labour force and of our calculations of the employment and productivity potentials to 1970.[5]

145. On the subject of a viable balance of payments, the Council has said:

> The attainment of potential output in 1970 implies more rapid increases in real income and spending in Canada than in most other countries . . . Compared with previous periods of rapid and sustained economic development, an improved performance of exports relative to imports is therefore, we believe, essential for the future if the attainment of our employment and rapid growth targets is not to be jeopardized by the threat of balance of payments difficulties.[6]

146. Relative to its treatment of the other four goals, the Council was much less specific about the meaning of an equitable distribution of rising incomes until its most recent review. In earlier reviews its most pointed reference to this objective was in relation to regional disparities. In its latest review, however, the Council devoted much attention to the general problem of poverty within an otherwise comparatively affluent society. One of its more emphatic references to this deplorable condition is as follows:

> Poverty in Canada is real. Its numbers are not in the thousands, but the millions. There is more of it than our society can tolerate, more than our economy can afford, and far more than existing measures and efforts can cope with. Its persistence, at a time when the bulk of Canadians enjoy one of the highest standards of living in the world, is a disgrace.[7]

147. Increasing public awareness of and concern about the problem of poverty is the latest manifestation of a growing sense of social values and social responsibility. Perhaps one of the oldest of these values is the concept of equality of opportunity, which has both ideological-political and economic overtones. Regardless of its derivation, equality of opportunity has acquired new meaning in recent years, both in education and in health care. Although

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[4] *Ibid.*, p. 105.
[5] *Ibid.*, pp. 46-7.
[6] *Ibid.*, pp. 77-8.
[7] Economic Council of Canada, *Fifth Annual Review: The Challenge of Growth and Change*, (Ottawa, Queen's Printer, 1968), p. 103.

much remains to be done, growing numbers of children from low income families are being given a better chance to pursue formal schooling to the limits of their abilities. Similarly in health care, fewer financial barriers stand in the way of adequate treatment for all. In these and other ways one of the long neglected strengths of the mixed enterprise system, equality of opportunity, is being given a better chance to prove itself.

148. Income and social security floors are also commanding more attention. Even when something approaching equality of opportunity is achieved, some groups and individuals are left behind. Over time, there has emerged a web of private charitable and public social security measures designed to respond to these problems. Unfortunately, the result has been neither equitable nor economic. Benefits vary considerably, more often because of the nature of the disadvantage rather than the need of the individual. Administratively there is unnecessary overlap, perhaps in part because of jealousy and vested interests of competing social welfare agencies.

149. Frustration with the present approach to these problems has led to some refreshing new ideas, the most notable of which is the guaranteed minimum income most often advanced in the form of a negative income tax designed to ensure all citizens a basic minimum standard of living. Regardless of the merits of the proposal, the fact that it is being seriously debated is an indication of how far society has come in terms of social values.

(2) The Range of Means

150. Canada has developed an increasingly complex range of means to meet its various objectives and purposes. Fundamental to its approach is the parliamentary system of government and the mixed enterprise system of economic organization. Operating within a decentralized federal-provincial framework, parliamentary government features the now classical division of authority between the legislative, executive and judicial branches of the state, as well as a variety of powerful regulatory agencies. Functioning within this setting, the mixed enterprise system remains based on the principles of private property and freedom of contract and the concept of limited liability.

151. To these pillars of the system has been added a greater measure of government involvement in all areas, especially in the economic sphere. The free market-place has never been relied on exclusively to chart the country's economic destiny. Pre-Confederation tariffs and post-Confederation national policy, as well as government investment in everything from canals and railways to radio and television and nuclear energy, all provide illustrations of the use of the state as an instrument to influence economic development. More recently, government intervention in the economy has taken the form of monetary and fiscal policies. Through tax and spending and debt management policies, governments at all levels develop fiscal strategies which influence the course of economic developments. At the federal level these strategies are supplemented by monetary policies, planned and implemented by the

Bank of Canada. Increasingly, trade and manpower and related policies are employed to assist the country to attain its goals.

152. A number of checks and balances have been built into the system. Collective bargaining is one. Others include anti-combines policy, state regulation of all manner of things from weights and measures to food and drug inspection, and a host of income and social security measures, including labour standards.

(3) Conflicts Among and Between the Ends and Means

153. Given the multiplicity of ends and means, competing interests abound. Several potential conflicts are germane to our appraisal of the industrial relations system. One illustration is provided by the conflict between freedom of contract and the imposition of minimum wages and other labour standards. Society has chosen to modify the former in favour of the latter. Another example is afforded by the conflict between the interest of the group and the interest of individuals under a collective bargaining regime. These competing interests are examined at length in Part Four of this Report. Also reviewed at a later point are conflicting interests which arise in the event of strikes or lockouts in essential industries. Among these interests are the role of the work stoppage in the collective bargaining process, the public desire to be protected from undue harm resulting from such a stoppage, and public concern about the cost of settlements granted to avoid such an eventuality.

154. In the remainder of this Part we focus on the difficulty Canada has had in attempting to achieve full employment and stable prices simultaneously, and on the relationship of collective bargaining to that problem. This is only one of many trade-offs in which collective bargaining is involved, but it requires more detailed attention than the others for reasons already stated.

THE TRADE-OFF BETWEEN FULL EMPLOYMENT AND PRICE STABILITY

155. When two desirable possibilities cannot be achieved together, one must give way or there must be a compromise. As between full employment and price stability, the term trade-off has been adopted to describe the dilemma confronting policy makers charged with responsibility for attempting to achieve both at once. The formulation of the trade-off problem presented here is simply a means of presenting the empirical dimensions of the problem and is not offered as a theoretical explanation in terms of cause and effect.

(1) The Nature, Dimension and Cost of the Trade-off

156. The trade-off between full employment and price stability shows that in the Canadian economy there is less and less price stability as full employment is approached. World-wide interest in such a phenomenon has

increased since the appearance of A. W. Phillips' historic paper in 1958[8] and the extension of his work developed in an article by R. G. Lipsey in 1960.[9] Although these papers concentrated on the relationship between the rate of change of money wages and the level of unemployment, much subsequent comment has substituted the rate of change of prices for that of money wages, assuming a consistent operational link between the two.

157. The nature and dimensions of the trade-off in Canada have been the subject of increasing research and debate. A summary of various studies can be found in the investigation for the Economic Council of Canada by Bodkin, Bond, Reuber and Robinson.[10] This investigation shows that while different authors included different explanatory variables for both wage and price adjustment relationships inherent in any trade-off model, the results have been similar. In their formulation of these relationships, the authors found a wage adjustment relationship in which wage changes were explained by changes in the Consumer Price Index, the rate of unemployment, and a lagged value of wage change itself. They also found a price change relationship in which the chief explanatory factors were wage changes in the same period, the rate of change of import prices, and lagged price changes. On the basis of these two sets of interrelationships, a trade-off equation was developed which explained prices in terms of unemployment, import prices, lagged unit profits and United States wage changes.

158. The study provided the basis for the Economic Council's discussion of the magnitude of the trade-off problem as shown in Chart 3. In its treatment of the dilemma the Council chose to rely on a trade-off zone rather than on the more conventional trade-off curve. The significance of this difference can be explained in terms of the number of variables in the trade-off equation or model that are held constant as the employment-price level relationship is allowed to approach a state of equilibrium. All other things being equal—wage changes in the same period, the rate of change of import prices, and lagged price changes—the policy maker is confronted at best with a choice of points along a curve to the left of which he cannot possibly move. The Council's concept of a trade-off zone is valid if the zone is not considered as a single wide-band curve but as a range within which a series of trade-off curves lie, each reflecting a different assumption about the degree of inflation inherent in the external environment.

159. According to research conducted for the Economic Council, the numerical dimensions of the types of trade-offs to be expected will fall within this trade-off zone. None of these combinations is compatible with the Coun-

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[8] A. W. Phillips, "The Relation Between Unemployment and the Rate of Change of Money Wage Rates in the United Kingdom, 1861-1957", *Economica,* November 1958.

[9] Richard G. Lipsey, "The Relation Between Unemployment and the Rate of Change of Money Wage Rates in the United Kingdom, 1862-1957: A Further Analysis", *Economica,* February 1960.

[10] Ronald G. Bodkin, Elizabeth P. Bond, Grant L. Reuber, T. Russell Robinson, *Price Stability and High Employment: The Options for Canadian Economic Policy: An Econometric Study,* (Ottawa, Queen's Printer, 1967).

Chart 3

[1]As indicated in the text, this chart shows a trade-off zone within which particular curves lie depending upon different assumptions about the external environment.

Source: Economic Council of Canada, *Third Annual Review: Prices, Productivity and Employment*, (Ottawa, Queen's Printer, 1966), p. 144.

cil's stated employment and price level goals. Specifically, it appears that regardless of what other policy improvements are made, the goal of three per cent unemployment is incompatible with a 1.4 per cent annual increase in consumer prices. That combination is to the left of the trade-off zone and there appears to be no policy that can shift the zone itself over to the desired combination.

160. In its analysis of this problem the Carter Commission recognized that the Council's goals in these two areas are overly optimistic:

> ... We expect that if an unemployment rate of 3.5 per cent is realized, it should be possible to keep the rate of increase of the consumer price index somewhere between 1.5 per cent and 2 per cent a year, provided

> that the rate of expansion of aggregate demand is carefully controlled, specific measures are quickly adopted to eliminate inflationary pressures from sectoral bottlenecks, a strong line is taken against those directly responsible for cost-push inflation when it appears, and foreign prices continue to rise in the future at about the same rate as they have in the past.[11]

161. All existing formulations of the trade-off curve in Canada are based necessarily on past, especially post-war, experience which is the product of a series of business cycles. It is not at all clear that this experience demonstrates anything conclusive about the nature of the trade-off curve which would emerge in a period of sustained full employment.

162. Unemployment has both economic and social costs. Economically, it means idle resources and foregone incomes. Every additional percentage of unemployment in Canada means at least another 75,000 persons out of work. Socially, the toll is incalculable because it is impossible to measure the suffering that afflicts the unemployed and their families. The psychological shock of being unable to work and take care of one's own needs is itself demoralizing in a society that expects every able bodied head of a family to provide for the needs and wants of his family.

163. Inflation can lead to both inefficiency in the allocation of resources and inequity in the distribution of income. In the absence of a floating exchange rate, it can cause serious balance of payments difficulties if the rate of increase of domestic prices outstrips those of Canada's major trading partners. It affects the general performance of the economy by forcing government to employ restrictive fiscal and monetary policies with resulting undesirable effects on employment and output. It also tends to distort the capital market with potentially detrimental effects on government financing and other activities, such as housing, which are heavily dependent on sources of financial support other than equity capital. The distorting impact of inflation is even greater with respect to the distribution of income and the ownership of wealth. This distortion reflects the differential effect of inflation on various types of earnings and assets. Particularly hard hit are those on fixed incomes, among whom are persons least able to protect themselves from the discriminatory impact of inflation.

164. Despite the high economic and social costs involved, no liberal democratic industrial state has mastered the trade-off challenge. Charts 4 and 5 provide estimates of the nature of the trade-off curve for a number of such countries: the first on the assumption of non-inflationary conditions and the second on the assumption of moderately inflationary conditions. In both cases the evidence reveals a similar pattern for all countries, although the specific dimensions of the problem vary. The reasons for these variations have not been thoroughly researched, but the explanation appears to lie in a host of varying circumstances. Among these are differing competitive and

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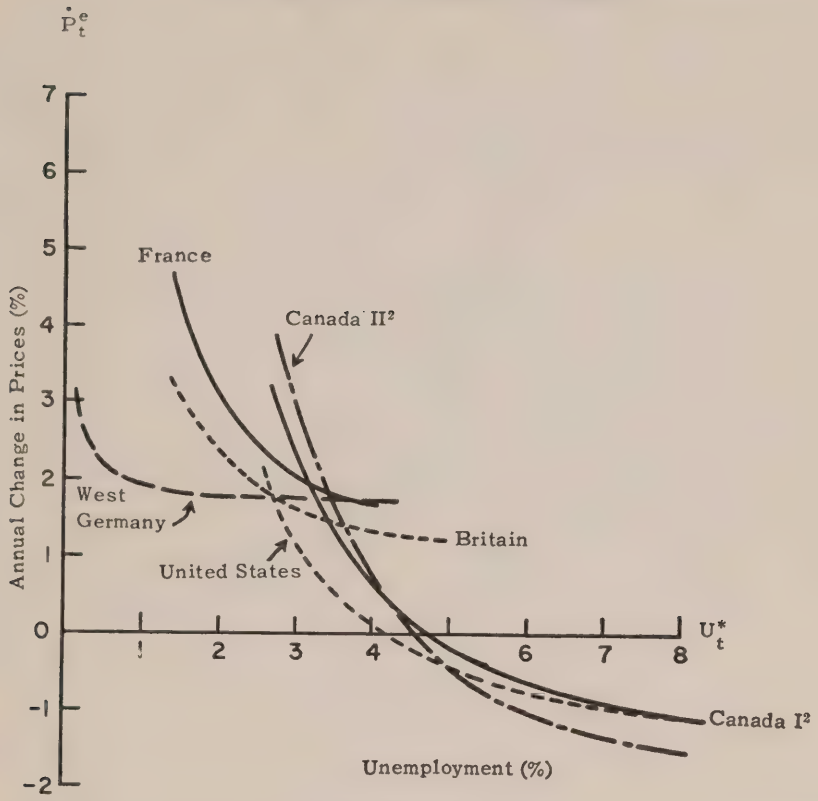
[11] *Report of the Royal Commission on Taxation,* (Ottawa, Queen's Printer, 1966), Vol. 2, p. 29.

Chart 4

TRADE-OFF CURVES UNDER NON-INFLATIONARY CONDITIONS[1]
FOR SELECTED WESTERN COUNTRIES



[1]Non-inflationary conditions mean that the variables used in the models for each country are given values which are not in themselves inflationary. In the case of Canada, these variables are foreign price changes, United States wage changes and lagged profits per unit output. For further reference see pages 172–176 of the source below.

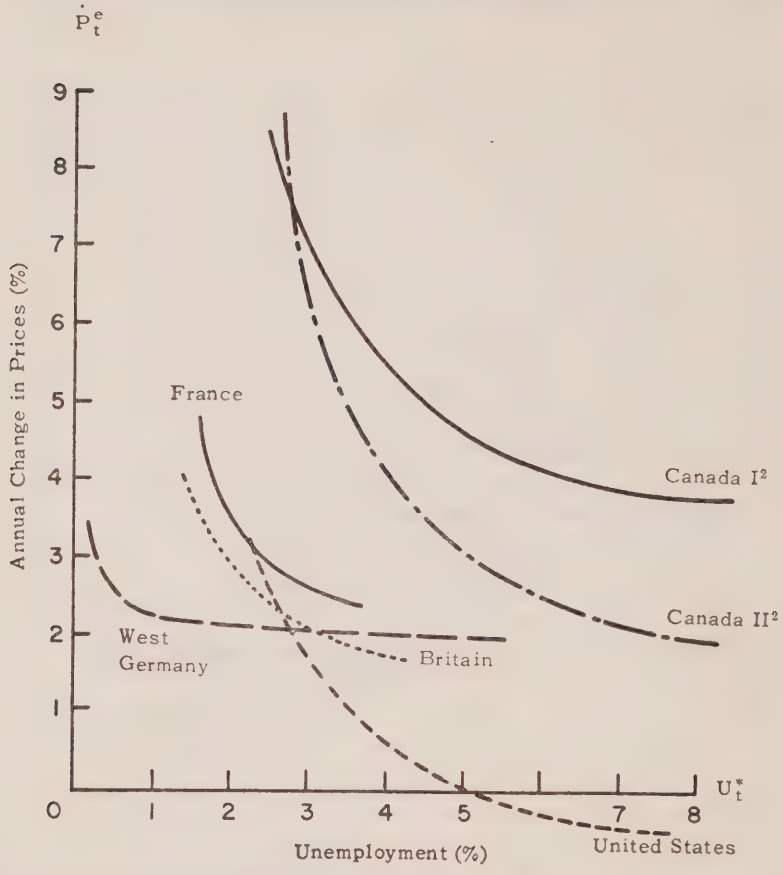
[2]In the table, the curve "Canada I" is based on arbitrary assumptions about the United States variables entering the equation while "Canada II" uses figures predicated upon the United States wage and price change relationships reflected in the United States trade-off curve shown. See page 261 of the source below.

Source: Ronald G. Bodkin, Grant L. Reuber, Elizabeth P. Bond and Russell Robinson, *Price Stability and High Employment: The Options for Canadian Economic Policy*: Special Study No. 5, Economic Council of Canada, Queen's Printer, Ottawa, 1966.

institutional factors, differing geographical and resource characteristics, and differing sociological environments. The degree of exposure of an economy to foreign competition can be of particular significance. Equally important can be the varieties of policies available in different countries to deal with bottlenecks or pressure points no matter where they appear. More debatable is the extent to which the wage and price setting mechanisms operating in different countries affect their relative performance with respect to the trade-off.

Chart 5

TRADE-OFF CURVES UNDER MODERATELY INFLATIONARY CONDITIONS[1] FOR SELECTED WESTERN COUNTRIES



[1]Moderately inflationary conditions mean that the variables used in the model are given values which are in themselves inflationary.

[2]See footnote 2 to Chart 4.

Source: Ronald G. Bodkin, Grant L. Reuber, Elizabeth P. Bond and Russell Robinson, *Price Stability and High Employment: The Options for Canadian Economic Policy:* Special Study No. 5, Economic Council of Canada, Queen's Printer, Ottawa, 1966.

(2) The Causes of Inflation—The Range of Possibilities[12]

165. Since the basic problem is to maintain full employment without inducing undue inflation, it is critical to appreciate the causes of inflation both in theory and in practice. We begin with an examination of the range of

[12]We take inflation to mean a general rise in the price level as indicated by the Consumer Price Index, the most commonly accepted general indicator of price movements. In so doing we are not unmindful of the problems of definition and measurement which beset this topic. See Economic Council of Canada, *Third Annual Review: Prices, Productivity and Employment,* (Ottawa, Queen's Printer, 1966), pp. 78-89.

theoretical alternatives, and then turn to an analysis of their application to Canadian experience.

166. The potential causes of inflation are many and varied, and economists are divided on the most appropriate explanation. Essentially there are three major schools of thought; each embraces a number of possible refinements, and they are not mutually exclusive. The first stresses the role of aggregate demand and is known as the demand-pull school. The second emphasizes the effect of market imperfections and institutional pressures and is generally referred to as the cost-push school. The third focuses on demand shifts and the interaction of the forces of demand-pull and cost-push and may be termed the structural school.

167. Exponents of pure demand-pull argue that a period of rising prices can be explained entirely by an excess of aggregate demand over supply. There are two variants of this view, one which conceives of the problem in terms of a monetary stock, and the other which visualizes it in terms of income and expenditure flows. The former, or classical monetary theory of inflation, attributes the rise in prices to excess spending resulting exclusively from an inordinate expansion in the money supply. The latter, or Keynesian theory, attributes price level increases to excess spending resulting from changes in a number of variables, including, for example, rising consumer expectations and demands, as well as changes in the quantity of money available. The more widely accepted of these theories, the Keynesian version, assumes that aggregate demand must be excessive since anything less than that could presumably be taken care of through an adjustment of relative prices which need not lead to an overall rise in the price level.

168. Most cost-push theories of inflation are a product of the post-war era. The term itself is misleading since it implies the existence of independent cost-push elements with a pronounced impact regardless of the state of the market. In fact, as one authority has suggested, it is not as simple as that:

> It is clear what people usually mean—or should mean—when they speak of cost inflation. They mean that the structural characteristics of labour and product markets are such that demand fluctuations produce different price-output results than would ensue if all markets were perfectly competitive.[18]

169. It is in this sense that the cost-push theory of inflation should be visualized as the product of an interaction between market imperfections and institutional pressures. Both may take various forms, although the former invariably reflects departures from the competitive factor and product markets of the economist's model. These imperfections may be caused, aggravated and exploited by a range of institutional pressures, and it is around these forces that much of the cost-push debate revolves. Trade unionism and collective bargaining are not the only institutions worthy of attention. Large

[18] Lloyd G. Reynolds, "Wage-Push and All That", *America Economic Review*, May 1960, p. 195.

corporations are equally suspect in terms of the market power they are sometimes able to wield. Inflationary pressures may also emanate from outside the country in the form of rising import prices. Government, too, in its various capacities may create upsetting non-market forces which contribute to inflation.

170. The same thing is true of any entity or group that can exercise some degree of discretion. According to the cost-push version of inflation, every such unit has the potential power to pose a problem. Thus, cost-push may be divided into a variety of categories, including wage-push, profit-push and import-price-push. The difficulty is not so much one of identification as of assessment. In each case the challenge is to determine the relative influence of the pressure in question and the surrounding economic circumstances.

171. The third type of inflationary model is based on certain features of both the demand-pull and the cost-push explanations, and is known as the structural or demand-shift hypothesis. It draws on demand inflation in terms of its emphasis on demand, but whereas the demand-pull theory focuses on the level of aggregate demand, this third model focuses on the composition of demand in different sectors of the economy. Unlike demand-pull, the new model does not assume that, in the absence of overall excess demand, variations in demand from sector to sector will sort themselves out in relative price movements rather than in a general upward movement of the price level. Because of market imperfections and institutional pressures, if only in the form of downward rigidity of prices and factor incomes, the adjustment of relative prices is said to occur not through offsetting price movements in response to varying sectoral conditions of demand, but through price increases in the expanding sectors. A situation in which some prices are always going up and none is ever going down would be extreme, but it does illustrate the inflationary potential of such a combination of movements.

(3) The Causes of Inflation—Canadian Experience

172. It is relatively easy to delineate the various possible causes of inflation in an economy; but it is invariably most difficult to distinguish between them and to allocate responsibility. Research on foreign as well as Canadian experience bears out the difficulty. Of the American record, Samuelson and Solow have said:

> We have concluded that it is not possible on the basis of a priori reasoning to reject either the demand-pull or cost-push hypotheses, or the variants of the latter such as demand-shift. We have also argued that the empirical identifications needed to distinguish between these hypotheses may be quite impossible from the experience of macrodata that is available to us, and that, while use of microdata might throw additional light on the problem, even here identification is fraught with difficulties and ambiguities.[14]

[14] Paul Samuelson and Robert Solow, "Analytical Aspects of Anti-Inflationary Policy", *American Economic Review*, May 1960, p. 191.

173. Referring to similar difficulties at the macro level in Canada, and in particular to the problem of determining the impact of unions and collective bargaining, it has been said:

> The effect of unions and collective bargaining on the level and structure of wages may seem at first glance to be among the more obvious of economic phenomena. However, when it has been carefully examined in the light of all the relevant and available statistical data, the *independent* influence of unions and collective bargaining on wages has proved surprisingly elusive and difficult to distinguish from the broader economic forces.... Neither in Canada nor elsewhere have scholars achieved a broad consensus of view concerning this subject.[15]

174. Judging by the results of a recent study of the construction industry in Canada, the technical problems of distinguishing between demand-pull and cost-push remain just as acute at the micro level:

> ... But however sharp the conceptual distinction, it remains exceedingly difficult, and perhaps impossible on the basis of the available evidence, to gauge precisely at any particular time how far any actual cost and price increases can be traced directly to the one or the other.[16]

175. It is in the light of these analytical difficulties that the following assessment must be read. More than anything else, this appraisal reveals that it is hazardous to be dogmatic about the relative weights to be attached to the various possible causes of inflation. There is no single complete explanation. There is a combination of forces at work whose relative importance varies both over time and in different settings. One cannot dismiss outright any of the major theoretical interpretations of inflation.

176. In the monetary version of the demand theory of inflation, it is axiomatic that, all other things being equal, the money supply must be increased sufficiently to validate an inflationary rise in prices. Although this does not prove cause and effect, it does suggest that an excess money supply can contribute to inflation and, more important, that monetary authorities could slow down or stifle an inflationary spiral by effectively tightening the money supply. In doing so they may engender an unacceptably high degree of idle capacity and unemployment. This problem could be avoided only if prices and factor incomes, including wages, were sufficiently flexible in a downward direction to induce customers and employers not to reduce their purchases of products and factors of production, including labour, despite contraction in the money supply. But such downward flexibility could give rise to destabilizing difficulties if it led to altered expectations and an untoward softening of markets. In any event, there is no extensive evidence to support the existence of any such degree of downward price and factor income flexibility, which helps to explain why the monetary authorities have

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[15] Economic Council of Canada, *Third Annual Review: Prices, Productivity and Employment, op. cit.*, p. 127.

[16] Frank Wildgen, "Economic Aspects: Work, Income and Cost Stabilization", H. Carl Goldenberg and John H. G. Crispo (eds.), *Construction Labour Relations,* (Ottawa, Canadian Construction Association, 1968), p. 48.

seemed so reluctant to restrict the money supply during recent inflationary periods. Aside from the possible adverse effects on employment, monetary authorities have occasionally had to consider the possible impact of any such action on the administration of government debt. Together, these considerations have inhibited them from playing a stronger anti-inflationary role, and may have led them to aggravate the problem. But the alternatives have appeared more costly and, in the absence of adequate cost-benefit analyses of unemployment and inflation, the appropriateness of their behaviour is a matter of judgment. Those who are inclined to be critical of the monetary authorities since World War II should consider the alternative costs that had to be weighed.

177. Other variations of the demand-pull school stress the pressures put on the economy when effective demand outstrips productive capacity. There have been many examples of this phenomenon associated with a variety of causes. World War II clearly demonstrated that the economy is especially vulnerable to such an imbalance during a war. So also did Canada prove exceedingly vulnerable to such an imbalance immediately after the war when a combination of savings and pent-up demand was released, with serious inflationary consequences. More recently the economy has been put under severe stress by a different and more disturbing source of demand pressures. In a society of rising expectations, most institutions and individuals press for all they can extract. Corporations charge and borrow more to finance vast capital expenditures in anticipation of growing demands. Consumers spend and borrow more to satisfy the higher standards of living they are driven to emulate. Government contributes further to the problem to the extent that excessive public expenditures add to inflationary pressures.

178. The effect of all these demands is to outstrip the country's capacity to meet them. The resulting inflationary pressures might again be dampened by a combination of tighter money and greater fiscal restraint. Again, the solution is not clear even if one assumes downward flexibility of price and factor incomes, an assumption which has probably become increasingly dubious as more and more groups have sought to place a floor under their existing consumption patterns. Monetary and fiscal policies could have reduced the demands placed on the economy and thereby reduced inflationary pressures; but once again the price could have been an unacceptably high level of idle capacity and unemployment.

179. Within the present framework of rising expectations, potential cost-push, or at least cost-rigidifying, mechanisms exist in varying degrees in the Canadian economy. For the most part, as indicated earlier, these arrangements reflect market imperfections. They range from commodity marketing boards with government sponsored price-fixing arrangements to associations of professional practitioners with their recommended fee schedules. Of more immediate interest are the activities of trade unions and those with whom they bargain. Collective bargaining may contribute to downward wage rigidity at least in the short run. Moreover, unions may be able to drive up wages

beyond what the employer would pay in their absence and thereby exercise a degree of independent upward wage pressure. Neither of these possibilities can be ruled out. But equally significant, excessive wage increases would be difficult unless employers felt they could absorb the cost or pass it on to the consumer.

180. In either event, one or both of two implications follows. One implication is that employers would be confident that they could concede higher wages and raise their prices correspondingly without a loss in sales, because government would validate the resulting inflation rather than risk a rise in unemployment. No one firm could operate with assurance on this assumption on its own; but a sufficient number of enterprises could do so if they believed that government would take measures to avert the unemployment and idle capacity that could result from the failure of fiscal and monetary authorities to accommodate to a rise in wages and prices. Thus, they could collectively assume that their individual actions would not have an adverse effect on themselves and, by so assuming, virtually ensure that the assumption would follow.

181. The other implication is that employers have discretionary power, as suggested by the number of firms that develop and pursue pricing policies. If their product markets were perfectly competitive, there would be no such need or possibility:

> To have a price policy implies that the price at which a firm sells is not determined exclusively by market forces outside its own control.[17]

182. The purpose of an enterprise's pricing policy does not really matter: the objective may be to achieve stable prices, a specific market share, a target return on investment, or some combination of these and other goals. Whatever the purpose, administered pricing is usually designed to lead to a result different from that which the forces of supply and demand would dictate if left on their own.

183. One frequently cited form of administered pricing is full cost pricing which includes a standard mark-up. The Economic Council of Canada in its Third Annual Review examined this practice on the basis of a survey of 21 corporations. Not surprisingly, the broadest conclusion reached was that generalizations on pricing policies relating to costs and mark-ups were almost impossible to make.

184. Despite this conclusion, the literature on this subject, as on inflation theory, has produced a polarization of views. As a result, only recently have some theorists accepted part of both positions and admitted that while mark-ups are not rigidly determined, neither are they as flexible as is often thought by those who deny the existence of any discretionary pricing power.

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[17] Edward S. Mason, "Competition, Price Policy, and High-Level Stability", *Economic Concentration and the Monopoly Problem*, (Cambridge, Harvard University Press, 1957), p. 173.

The key to the question is the degree of responsiveness of mark-ups to changes in demand.

> The empirical question is not whether prices are determined by target-return pricing or by supply and demand, but rather: what is the actual combination of the two mechanisms in any particular industry?[18]

185. Practice is normally somewhere between the two extremes, a position which allows the existence of some discretionary price behaviour.

> The full-cost doctrine and the other theories which relate price change to direct-cost movements are attempts to deal constructively with price theory as applied to markets which fall between the competitive and the monopolistic.[19]

186. Present knowledge of business pricing procedures leads to the conclusion that discretionary power may play a role in the inflationary process. Firms sometimes give in to high wage demands or grant them on their own because they know that they can be recovered through higher prices. Also, target return pricing and the planned corporate atmosphere can lead to price increases that more than cover cost increases.

187. The point has already been made that unions can successfully pursue excessive wage claims only if the corporations with which they negotiate have the ability to cover such an increase. Unions, too, may operate on the premise that government will bolster that ability by putting up with whatever degree of inflation may be necessary in order to avoid any greater unemployment. But whatever else is to be said on this subject, it is clear that the activities of corporations as well as unions require attention:

> . . . But if prices as well as wages are set by an essentially political process, economists should have guilty consciences about casually concluding that only labor's excessive wage claims can be responsible for creeping inflation, when these claims can be judged excessive only because they are inconsistent, at stable prices, with the also politically-determined markup claims of business.[20]

188. The degree of cost-push which any institutional pressure may generate is very much a product of the market within which they operate. Foreign competition can be of particular significance in this respect. Where foreign suppliers pose an ever-present threat, domestic producers and, indirectly, those supplying factors to them are highly circumscribed in terms of the institutional pressure they can bring to bear. This fact shows up clearly in an industry like textiles, where both management and labour must constantly bear in mind the threat posed by foreign competition. Such competition is less of a factor where tariff protection is high or where the cost of transportation is comparatively great. It affords almost no restraint in many service industries, such as land transportation or construction, where the scope for

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[18] O.Eckstein, "A Theory of the Wage-Price Process in Modern Industry", Review of Economic Studies, XXXI (4) No. 88, 1964, p. 270.

[19] Richard B. Heflebower, "Full Costs, Changes and Prices", *Business Concentration and Price Policy*, (Princeton, National Bureau of Economic Research, 1955), p.p. 390-391.

[20] Gardner Ackley, "Administered Prices and the Inflationary Process", *American Economic Review*, May, 1959, p. 430.

cost-push pressure is correspondingly greater. Even where there is heavy reliance on foreign imports, it does not necessarily follow that the market for such goods will be more competitive, since the international industry may be monopolistically or oligopolistically organized. Where this is the case, there are certain to be purely domestic markets that are relatively more competitive and therefore less subject to institutional pressures.

189. Many of the activities of government are vulnerable to cost-push pressure because they are often supplied on a monopoly basis. Since most of the goods and services made available by the public sector of the economy are offered on the basis of a political rather than a market test, they are not subject to the same series of supply and demand checks as goods and services produced in private industry. This element increases the potential scope for successful upward pressure on costs by organized groups of suppliers and employees in the public service, and helps to explain the concern which has been expressed in many quarters about the present state of collective bargaining in the federal public service.

190. Just as there is some evidence to suggest that there are both aggregate demand and cost-push pressures behind Canada's rising price levels, so also is there support for the structural or demand-shift version of inflation. The prevalence of downward rigidity in prices and wages and other factor incomes makes it impossible to dismiss this interpretation of the problem. There is resistance to declines in many of these areas. Because many prices and incomes respond much more readily to upward than to downward pressure, upward flexibility becomes the major means by which the economy secures a relative adjustment of prices and incomes consistent with shifting demand. This is not to say that no prices or incomes ever fall. Some do, especially where they are not supported by protective institutional arrangements operating within imperfect markets which they themselves may help to create. The problem is that fewer prices and incomes go down in the face of declining opportunities or productivity increases than go up when confronted by more buoyant circumstances or productivity decreases. Thus, the whole price and income structure is ratcheted up by the changing composition of demand.

191. It is appropriate to warn again of the dangers of assigning the responsibility for inflation to particular causes. There is no single explanation, but a varying mixture of the three major types of inflation. No inflation of any intensity or length can take place in the absence of demand pressure; to that extent the demand-pull school remains of overriding significance. At the same time, experience shows that inflation can commence before there is aggregate excess demand and may continue well after such pressure has abated. This suggests that an exclusively demand-oriented approach is misleading, and gives support to exponents of both cost-push and demand-shift explanations of inflation. Yet neither of these models can lead to a sustained inflationary spiral in the absence of an upswing in overall demand; they too, either alone or in concert, fall short of a complete explanation.

THE ROLE OF COLLECTIVE BARGAINING

192. We now examine more specifically the extent to which collective bargaining contributes to inflation and the trade-off problem. This review requires an appreciation both of the structure of collective bargaining and of the behaviour of wages and prices.

(1) The Structure of Collective Bargaining

193. The collective bargaining system in Canada is limited in its coverage, and is fragmented and decentralized. The fact that, as traditionally defined, it now only covers about one-third of the non-agricultural labour force is noted in Part Two and is referred to again in Part Four where some broader ramifications of this limited coverage are examined. Even when other organized groups are included, a majority of Canadian workers remain uncovered by collective bargaining. The effects of the process, however, extend beyond those embraced by collective bargaining through both formal means, such as the decree system in Quebec, and informal means, such as non-union firms that choose to emulate union standards. Moreover, most of those who engage in collective bargaining in the traditonal sense are concentrated in the major manufacturing, mining and transportation sectors of the economy, a feature which must be recognized in assessing the system's inflationary potential.

194. Within the organized sector of the economy, collective bargaining is anything but a consolidated and centralized process.[21] Table 6 provides a percentage breakdown of collective agreements in 1953 and 1965 and the numbers of employees covered by type of bargaining unit in units involving 500 or more workers. Although a majority of these agreements are negotiated between a single establishment and a single union, only about one-third of the employees included in the survey are covered by this type of agreement. There were no major changes from 1953 to 1965. Most of these agreements are to be found in relatively small and medium sized single-plant enterprises, although they are common among large multi-plant companies in the steel, aluminum, chemical and auto industries. The proportion of single-establishment single-union collective bargaining would probably be much higher if negotiating units of less than 500 employees were included in the survey, but there would likely be a much smaller increase in the percentage of employees affected by such arrangements.

195. Single-establishment multi-union negotiating units account for less than four per cent of the work force. There was a greater increase in such units than in the proportion of workers covered by them. Little significance should be attached to this development since this kind of bargaining is confined to specialized situations where unions share contiguous bargaining units, something which can happen in a wide variety of industries.

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[21] See C. G. Simmons, *Coordinated Bargaining by Unions and Employers,* Task Force Study.

TABLE 6

PERCENTAGE DISTRIBUTION OF COLLECTIVE AGREEMENTS AND NUMBER OF EMPLOYEES BY TYPE OF NEGOTIATING UNIT[1]

(Collective Agreements Covering 500 or More Employees)

1953 and 1965

Types of Negotiating Units	Agreements		Employees Covered	
	1953	1965	1953	1965
	%	%	%	%
Single Establishment—Single Union	55.3	56.1	30.8	34.3
Single Establishment—Multi-Union	3.4	3.7	1.1	2.9
Multi-Establishment—Single Union	21.2	18.5	19.6	22.2
Multi-Establishment—Multi-Union	1.9	2.9	1.6	3.6
Multi-Company—Single Union	3.4	6.1	1.3	5.9
Multi-Company—Multi-Union	1.9	0.7	29.9	14.1
Employer Association—Single Union	11.5	11.2	14.4	15.6
Employer Association—Multi-Union	1.4	0.7	1.2	1.5
Total	100.0	100.0	100.0	100.0

[1]Excluding the construction industry.

SOURCE: Alton W. J. Craig and Harry J. Waisglass, "Collective Bargaining Perspectives", *Relations industrielles/Industrial Relations*, Vol. 23 (1968) No. 4, page 582.

196. In 1965, multi-establishment single-union collective agreements accounted for 18.5 per cent of the surveyed agreements and covered 22.2 per cent of the workers. This was almost a complete reversal of the corresponding proportions in 1953, but nothing special is to be inferred from this change. Such agreements may embrace two or more plants of a corporation and may cover plants in only one area, region or province, or may extend across the country. Although corporation-wide bargaining is not the dominant practice within this category, it occurs in many industries, including railways, automobiles, agricultural implements, meatpacking, electric power, communications and broadcasting.

197. There has been some change in the level of multi-establishment multi-union bargaining, but what was said with respect to single-establishment multi-union cases applies to this situation as well.

198. Despite a substantial increase in multi-company single-union bargaining, especially in terms of the number of employees covered, it still accounts for only about six per cent of the agreements and workers covered by the survey. It also tends to be limited geographically to particular cities or regions, as in the case of Ontario breweries, major retail food chains, and British Columbia pulp and paper.

199. The greatest decline has occurred in multi-company multi-union bargaining, particularly in terms of the proportion of workers involved. The

decline in this percentage is explained largely by developments in the railway and pulp and paper industries. In the former there has been a marked decline in employment. In the latter there has been a breakdown of some multi-union arrangements that prevailed for many years.

200. Employer-association single-union bargaining has increased its coverage of the work force but not its percentage of agreements. Such bargaining is to be found on a community basis in clothing, printing and leather and on a broader basis in trucking, coal mining, sawmilling and shipping. The number of employees covered by this kind of bargaining would increase sharply if construction negotiations were included in the survey.

201. Employer-association multi-union bargaining continues to account for a small proportion of agreements and workers. Its strongest base is in certain parts of the pulp and paper and sawmilling industries.

202. The data presented in Table 6 show that collective bargaining in Canada is not conducted in a concentrated fashion. Multi-party bargaining is uncommon in the sense of involving more than one company or one union. For example, agreements which involve no more than one corporate entity accounted for over 80 per cent of all agreements in 1965. At the other extreme, 1.4 per cent of the agreements were negotiated in cases involving more than one company and more than one union. The structure of bargaining, however, is more centralized than these figures suggest as is revealed when the distribution of agreements by the number of employees covered is used as the basis for comparison. Instead of the proportion of 1.4 per cent, the coverage of agreements embracing more than one company and more than one union jumps to 15.6 per cent. Nonetheless, the overall agreement-making process is far from centralized.

203. What the Canadian collective bargaining system lacks in structure could be made up in practice through a series of formal or informal pattern-setting and pattern-following mechanisms. Such a phenomenon depends on the emergence of settlements in key firms which spread to other enterprises. However, the little research that has been done on this possibility in Canada shows only limited evidence to support it. As one study has indicated:

> Unfortunately, little evidence exists on this subject in Canada and therefore it is not possible to assess fully the extent, nature and influence of pattern bargaining in the Canadian economy. Negotiations resulting in similar terms of settlement have been observed among major manufacturing, mining, logging and railway companies but the patterns of such settlements are generally regional, largely because the industries affected, e.g., automobiles and rubber, are concentrated regionally. However, even in the case of such nationwide or multi-regional industries as steel, logging, pulp and paper, and mining, the spread of patterns tends to be restricted regionally. Nation-wide patterns in some terms of settlement are found at times in meatpacking and can manufacturing. Similarity of settlements across major industry lines have been more difficult to document, especially beyond the local or community level.[22]

[22] George Saunders, *Wage Determination in Canada,* (Ottawa, Canada Department of Labour, Economics and Research Branch, Occasional Paper No. 3, 1965), pp. 14-15.

204. This summation of the available data on pattern setting and pattern following indicates few direct links between settlements in different localities and different industries, but it suggests many links between various bargaining units on a locality and intra-industry basis. Against this evidence, however, is the fact that no existing study has ruled out the possibility of major settlements creating a "demonstration effect"[23] in the form of higher expectations in many other bargaining units in the same locality or industry or elsewhere, both in the collective bargaining system and in non-union situations. This possibility is not to be ignored, although there are no firm data on its significance, except perhaps in some of the larger and more dramatic collective bargaining confrontations where terms of settlement negotiated in other major enterprises sometimes loom large in the thinking of both parties.

205. Another feature of the structure of collective bargaining in Canada is the lengthening of the average duration of collective agreements over the past few years. Table 7 shows that the average duration of contracts for the years 1953 to 1965, weighted by the number of employees involved, rose from 18.1 to 27.9 months. Over time, this lengthening could have either

TABLE 7

AVERAGE DURATION OF CONTRACTS WEIGHTED BY NUMBER OF EMPLOYEES[1]

(Collective Agreements Covering 500 or More Employees)

1953—1966

Signing Year	Contract Duration (Months)
1953	18.1
1954	18.8
1955	16.1
1956	23.0
1957	18.6
1958	21.9
1959	22.7
1960	21.5
1961	22.2
1962	24.2
1963	25.4
1964	25.1
1965	27.9
1966 (first half)	28.5

[1]Excluding the construction industry.

SOURCE: Alton W. J. Craig and Harry J. Waisglass, "Collective Bargaining Perspectives", *Relations industrielles/Industrial Relations*, Vol. 23 (1968) No. 4, page 585.

[23] For the use of this term in a related context, see Stuart Jamieson, *Industrial Relations in Canada*, (Toronto, Macmillan & Co., 1957), p. 23.

restraining or inflationary consequences. Longer terms can have a temporary deflationary impact by serving to hold wages below the level to which they would have risen in the absence of the contract. But this can lead to pressures for an unduly high "catch-up" settlement after the contract expires. The net effect of longer terms is hard to predict and may reflect more than anything else the timing of the various settlements with respect to business cycle developments.

(2) Wage and Price Behaviour in Canada

206. The behaviour of wages and prices can be examined from various viewpoints. Before turning to those manifestations of their behaviour which relate directly to the inflationary issue, it is instructive to examine what has happened to labour's share of national income, as well as to various types of wage differentials.

207. Table 8 and Chart 6 show fluctuations which have taken place since 1946 in labour's share (wages, salaries and supplementary labour income) of national income (actually net domestic product of the non-farm

TABLE 8

LABOUR'S SHARE OF NET DOMESTIC PRODUCT
OF THE NON-FARM BUSINESS SECTOR
IN CURRENT DOLLARS

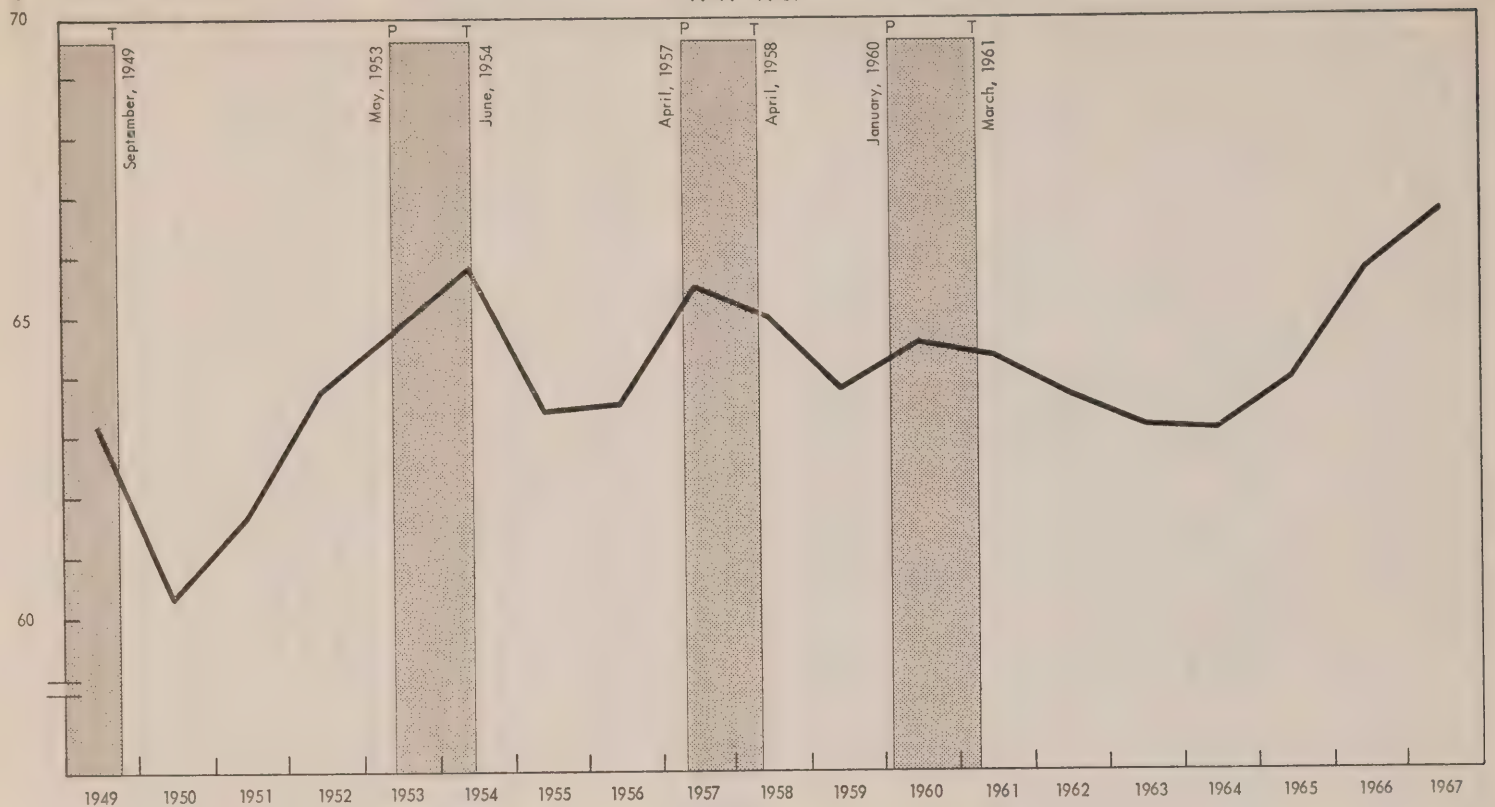
1949—1967

Year	Labour's Share
	%
1949	63.2
1950	60.3
1951	61.7
1952	63.8
1953	64.8
1954	65.8
1955	63.4
1956	63.5
1957	65.5
1958	65.0
1959	63.8
1960	64.5
1961	64.3
1962	63.7
1963	63.2
1964	63.1
1965	63.9
1966	65.8
1967	66.7

SOURCE: A. Porter, *Wages in Canada and the United States*, Task Force Study.

Chart 6

LABOUR'S SHARE OF NET DOMESTIC PRODUCT OF THE NON-FARM BUSINESS SECTOR IN RELATION TO THE BUSINESS CYCLE[1]
1949–1967



Note: P—peak of business cycle; T—trough of business cycle.
[1]Based on current dollars.
[2]Peaks and troughs as used by the Economic Council of Canada.
Source: Table 8.

business sector). The record shows labour's share fluctuating between 60 and 66 per cent of national income, with no particular trend. Exclusive of the depression years of the thirties, this proportion is consistent with a much longer-run pattern, a subject discussed in Part Four in relation to the role of collective bargaining in terms of standards of equity in the distribution of income.

208. The most striking feature of labour's share of national income is its sensitivity to the business cycle. This sensitivity is brought out clearly by the work of the Economic Council of Canada that shows the realignments which take place between wage and salary income and profits over the course of the business cycle. At the beginning of an upswing in the economy and during the early part of a boom, labour's share tends to be at its lowest as profits rise rapidly with increasing utilization of capacity. Then, toward the peak of the cycle, substantial increases in wages and salaries cut into profits, and labour's share rises correspondingly. In terms of its effects on unit labour costs and unit profits, this process has been described as follows:

> ... In the early stages of the expansion, when unit labour costs are typically declining, profits per unit of output tend to rise very strongly. Well before the expansion has reached its peak, however, as unit labour costs turn upward, profits per unit of output turn sharply down. These declines in unit profits have usually continued well into the recession, a development which mirrors the fact that unit labour costs have tended to continue to rise well after the peak of the cycle has been passed.[24]

209. The cyclical behaviour of various types of income over the business cycle proves nothing about the causes of inflation, except perhaps that the problem is aggravated as the different factors strive for a greater share of the national income. As one authority has stated:

> ... The implication is that attempts by labour or management to change their share of total income are unlikely to have much effect and are likely to lead only to more inflation.[25]

210. Superficially, one might argue that it is wage and salary pressure toward the peak of the cycle that is the source of the difficulty. But it could as easily be that there would be no such pressure, or at least it would not be so pronounced, were it not for the large profits earned during the upturn. In both cases, moreover, the explanation may not lie so much in cost-push as in demand-pull pressure.

211. It is also interesting to review the history of various types of wage differentials in Canada.[26] Table 9 reveals what has happened to the geographic structure of wages and salaries as reflected in an industrial composite of average weekly wages and salaries by region and province for the years

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[24] Economic Council of Canada, *Third Annual Review: Prices, Productivity and Employment, op. cit.*, p. 100.

[25] David C. Smith, *Incomes Policies: Some Foreign Experiences and Their Relevance for Canada*, (Ottawa, Queen's Printer, 1966), p. 79.

[26] H. D. Woods and Sylvia Ostry, *Labour Policy and Labour Economics in Canada*, (Toronto, Macmillan, 1962), Chapters 14 to 17; and Lloyd G. Reynolds and Cynthia Taft, The *Evolution of Wage Structure*, (New Haven, Yale University Press, 1956), Chapter 11.

TABLE 9

AVERAGE WEEKLY WAGES AND SALARIES
BY REGION AND PROVINCE

1949 and 1967

	Average Weekly Wages and Salaries		Change 1949—1967		Rank By Province	
	1949	1967	%	Absolute	1949	1967
	$	$		$		
CANADA	42.96	102.79	139.2	59.83		
Atlantic Region	—	85.01	—			
Newfoundland	—	91.88	—			6
Prince Edward Island	33.56	70.69	110.6	37.13	9	10
Nova Scotia	37.65	82.63	119.5	44.98	8	9
New Brunswick	38.08	85.27	123.9	47.19	7	8
Quebec	41.19	101.13	145.5	59.94	6	3
Ontario	44.36	105.87	138.7	61.51	3	2
Prairie Region	—	96.68	—	—		
Manitoba	42.68	91.88	115.3	49.20	4	6
Saskatchewan	41.50	95.68	130.6	54.18	5	5
Alberta	44.40	100.82	127.1	56.42	2	4
British Columbia	45.65	114.40	150.6	68.75	1	1

SOURCE: 1949 data—Dominion Bureau of Statistics: *Annual Review of Employment and Payrolls*, Catalogue No. 72–002.201.
1967 data—Dominion Bureau of Statistics: *Employment and Average Weekly Wages and Salaries*, Catalogue No. 72–002.

1949 and 1967. These data show comparatively little change in ranking by region or province, although Quebec and Ontario have gained while Manitoba and Alberta have slipped.

212. Table 10 and Chart 7 show the changes that have taken place in the industrial wage structure since 1949. There has been some shifting in the ranking of the different industries, with the greatest change occurring in construction which rose from sixth to first place.

213. Table 11 provides a longer perspective on selected occupational and skill differentials in Canada. These data show a narrowing of the gap between skilled and unskilled occupations in most industries until the postwar period, at which time the narrowing process began to slow and in some cases to reverse.

214. How significant are changes in the types of wage differentials we have described? Two studies are of particular relevance: one an international comparative analysis[27], and the other a Canadian investigation.[28] The first

[27] Organisation for Economic Co-opération and Development, *Wages and Labour Mobility*, (Paris, O. E. C. D, 1965).

[28] G. Rosenbluth, "Wage Rates and the Allocation of Labour", *Canadian Journal of Economics*, August 1968, pp. 566-582.

TABLE 10

AVERAGE WEEKLY WAGES AND SALARIES
IN MAJOR CANADIAN INDUSTRIES

1949 and 1967

Industry	Average Weekly Wages and Salaries		Change 1949—1967		Rank	
	1949	1967	%	Absolute	1949	1967
	$	$		$		
Forestry	40.62	113.96	180.6	73.34	7	3
Mining	51.49	129.39	151.3	77.90	1	2
Manufacturing	43.97	106.53	142.3	62.56	4	5
Construction	41.28	130.63	216.4	89.35	6	1
Transportation[1]	48.39	113.10	133.3	64.71	2	4
Public Utilities[2]	48.14	—	—	—	3	—
Trade	36.97	81.22	119.7	44.25	8	7
Finance Insurance and Real Estate	42.22	98.98	134.4	56.76	5	6
Service	28.05	75.35	168.6	47.30	9	8
INDUSTRIAL COMPOSITE	42.96	102.79	139.3	59.83	—	—

[1]Transportation includes communication and storage.

[2]As a result of a change in the Standard Industrial Classification, Transportation *et al* is now defined to include Public Utilities.

SOURCE: (a) Dominion Bureau of Statistics, *Annual Review of Employment and Payrolls*, Catalogue No. 72–201.

(b) Dominion Bureau of Statistics, *Employment and Average Weekly Wages and Salaries*, Catalogue No. 72–002

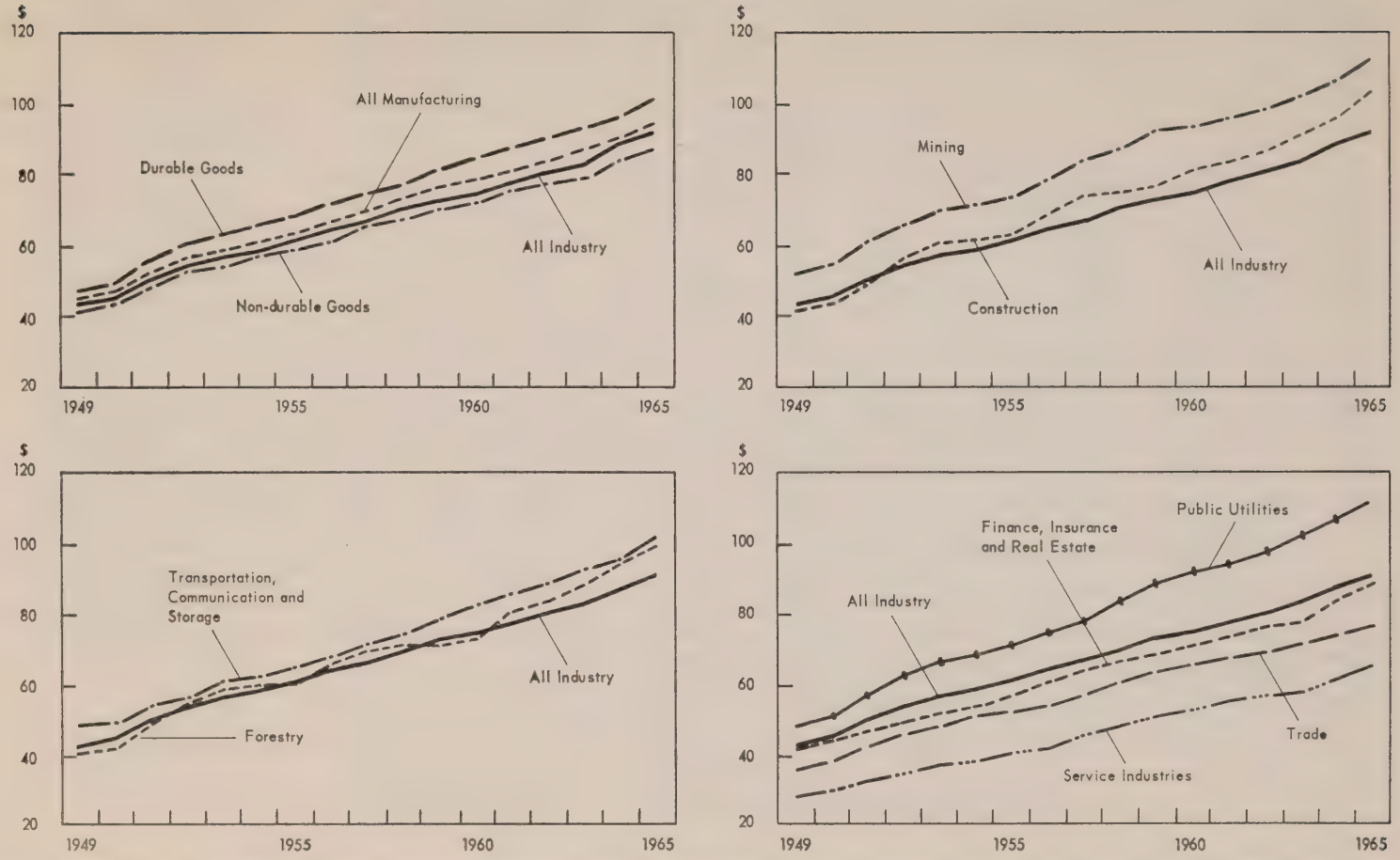
study, commissioned by the Organisation for Economic Co-operation and Development (OECD) entailed an elaborate statistical analysis of the relationship between earnings and employment in a number of western countries. The central conclusion was that wage differentials have not played a major role in the allocation of workers between different areas, industries and occupations. In the case of Canada, however, this finding was qualified:

> . . .But in contrast to the general European experience, neither the United States nor the Canadian economies were operating at full employment levels during the period studied, and in the case of Canada, the strengthening of the relationship (between employment and earnings changes) was more marked than elsewhere. This, in conjunction with certain other aspects of the Canadian labour market, (its big land surface, geographical compartmentalization, and decentralized wage determination) suggests that some of the data for Canada could be interpreted as showing a higher degree of wage-oriented employment flexibility there than elsewhere.[29]

[29] Organisation for Economic Co-operation and Development, *op. cit.*, *p.* 10

Chart 7

AVERAGE WEEKLY WAGES AND SALARIES IN MAJOR INDUSTRIES
1949–1965



Source: Canada Department of Labour, Economics and Research Branch, *The Behaviour of Canadian Wages and Salaries in the Postwar Period: A Graphic Presentation*, pp. 32–33.

TABLE 11

OCCUPATIONAL WAGE DIFFERENTIALS IN SELECTED INDUSTRIES

Selected Periods

	Skilled Rate as a per cent of Unskilled Rate							
	1923–29	1930–33	1943–46	1947–50	1951–54	1955–58	1959–62	1963–65
Automobile Parts								
Machinists	165.3	171.0	129.3	122.0	120.5	129.4	140.0	131.2
Agricultural Implements								
Pattern Makers	163.4	154.3	150.0	142.0	141.9	147.1	143.7	129.2
Shipbuilding								
Boiler Makers	162.3	161.3	162.0	146.1	128.9	130.0	120.9	119.6
Sheet Metal								
Sheet Metal Workers	205.2	233.9	166.5	161.9	135.7	145.9	141.0	142.3
Pulp and Paper								
Millwrights (Maintenance)	171.0	175.8	149.7	131.1	133.1	134.5	131.8	132.5
Digester Cook (Pulp)	207.2	206.6	170.0	145.7	143.8	141.3	138.4	138.7
Furniture								
Upholsterers	160.1	151.6	164.4	165.2	172.8	168.5	148.0	147.7
Construction								
Toronto Bricklayers and Masons	229.2	234.5	188.9	201.8	199.4	180.2	160.0	149.3
Toronto Carpenters	175.5	204.8	169.1	175.8	184.0	164.8	148.1	141.9
Vancouver Bricklayers and Masons	228.2	265.1	182.6	172.4	147.4	145.6	138.2	134.2
Vancouver Carpenters	176.3	187.9	158.3	152.7	140.4	136.0	135.0	132.8
Printing and Publishing								
Toronto Compositors	217.6	250.8	210.7	196.5	195.3	204.9	224.6	207.2
Vancouver Compositors	183.4	251.0	206.5	179.8	172.7	172.7	166.5	164.7
Municipal Government Service								
Toronto Policemen	130.2	132.8	126.9	126.7	133.1	130.6	130.3	130.8
Urban and Suburban Transport								
Toronto Electricians	111.7	133.7	138.0	125.0	109.1	118.6	123.7	120.9

SOURCES: H. D. Woods and S. Ostry, *Labour Policy and Labour Economics in Canada*, (Toronto, MacMillan, 1962) pp. 432–433; and Canada Department of Labour, Economics and Research Branch, *The Behaviour of Canadian Wages and Salaries in the Postwar Period; A Graphic Presentation*, (Ottawa, Queen's Printer, 1967), pp. 98–99.

215. The more recent Canadian study shows that an even stronger qualification is in order. The OECD inquiry studied the relationship between absolute earnings and employment levels for particular industries; the Canadian study explored the link between relative earnings and relative employment. For many industries and some provinces there is a high correlation in respect of both fluctuations and trends. No similar test could be made on occupational differentials because of data limitations. Overall, however, this investigation suggests a labour force distribution that is quite sensitive to shifts in relative earnings.

216. With some qualification, the significance of this finding may be put another way. Although much research remains to be done, a pronounced tendency over the medium and long run to reflect market forces emerges from a perusal of changing geographic, industrial and occupational earnings in Canada.[30] Whatever destabilizing pressures may intervene in the short run are overridden in time by the interaction of supply and demand. In this sense, the wage structure remains responsive to the forces which economists say must eventually dominate. This, however, does not indicate whether the short run adjustments in the wage structure take place in a non-inflationary or an inflationary manner. That remains an open question to which we return after presenting some of the data which are most frequently cited in the course of the continuing debate over the relationship between collective bargaining and inflation.

217. Table 12 and Chart 8 feature the type of data which figure largely in public debate about the issue which is central to this Part of the Report. These types of data are used more frequently than either their reliability or their supposed interrelationships warrant. Shown in the table and chart are comparative increases since 1949 in the Consumer Price Index, productivity in manufacturing in terms of man-hour output, and average hourly earnings in manufacturing in both current and 1949 dollars seasonally adjusted. The data show average hourly earnings in current dollars rising faster than the Consumer Price Index and faster than productivity per man-hour, especially between 1949 and 1952, after which the two series rise at approximately the same rate. In contrast, average hourly earnings in real terms have risen, but not as fast as productivity increases. The problem is to sort out the significance of these relative movements, a subject to which the Report now turns.

(3) Collective Bargaining and Inflation

218. As we stressed at the outset, the extent to which collective bargaining contributes to inflation is a matter of considerable controversy. It is essential first to dispel some misleading deductions that are often made about the relationship between these two phenomena. One of the most familiar arguments claims that inflation results from unions causing money wages to rise faster than productivity. Yet, even assuming unions were the cause or

[30] See, for example, George Saunders, *op. cit.*

TABLE 12

CONSUMER PRICES AND WAGES AND PRODUCTIVITY IN MANUFACTURING

1949-1966
(1949 = 100)

Year	Consumer Price Index (Col. 1)	Index of Manufacturing Output per Man-hour (Col. 2)	Index of Average Weekly Wages in Manufacturing (Current Dollars) (Col. 3)	Index of Average Weekly Wages in Manufacturing (1949 Dollars) (Col. 4)
1949	100	100.0	100	100
1950	102.9	105.8	105.5	101.9
1951	113.7	110.5	118.1	103.0
1952	116.5	112.9	129.0	111.0
1953	115.5	116.6	134.8	116.7
1954	116.2	121.4	137.6	118.4
1955	116.4	129.3	142.4	122.4
1956	118.1	134.7	149.5	126.3
1957	121.9	135.5	155.6	127.4
1958	125.1	139.9	160.0	127.7
1959	126.5	147.6	168.1	132.8
1960	128.0	153.1	172.4	134.5
1961	129.2	160.8	177.9	137.7
1962	130.7	172.2	183.4	140.1
1963	133.0	179.6	190.2	142.8
1964	135.4	182.1	198.6	146.5
1965	138.7	195.3	208.2	149.7
1966	143.9	201.4	219.6	152.6
1967	149.0	202.4	232.0	155.7

SOURCES: Column 1—Dominion Bureau of Statistics, *Prices and Price Indexes*, Catalogue No. 62-002.

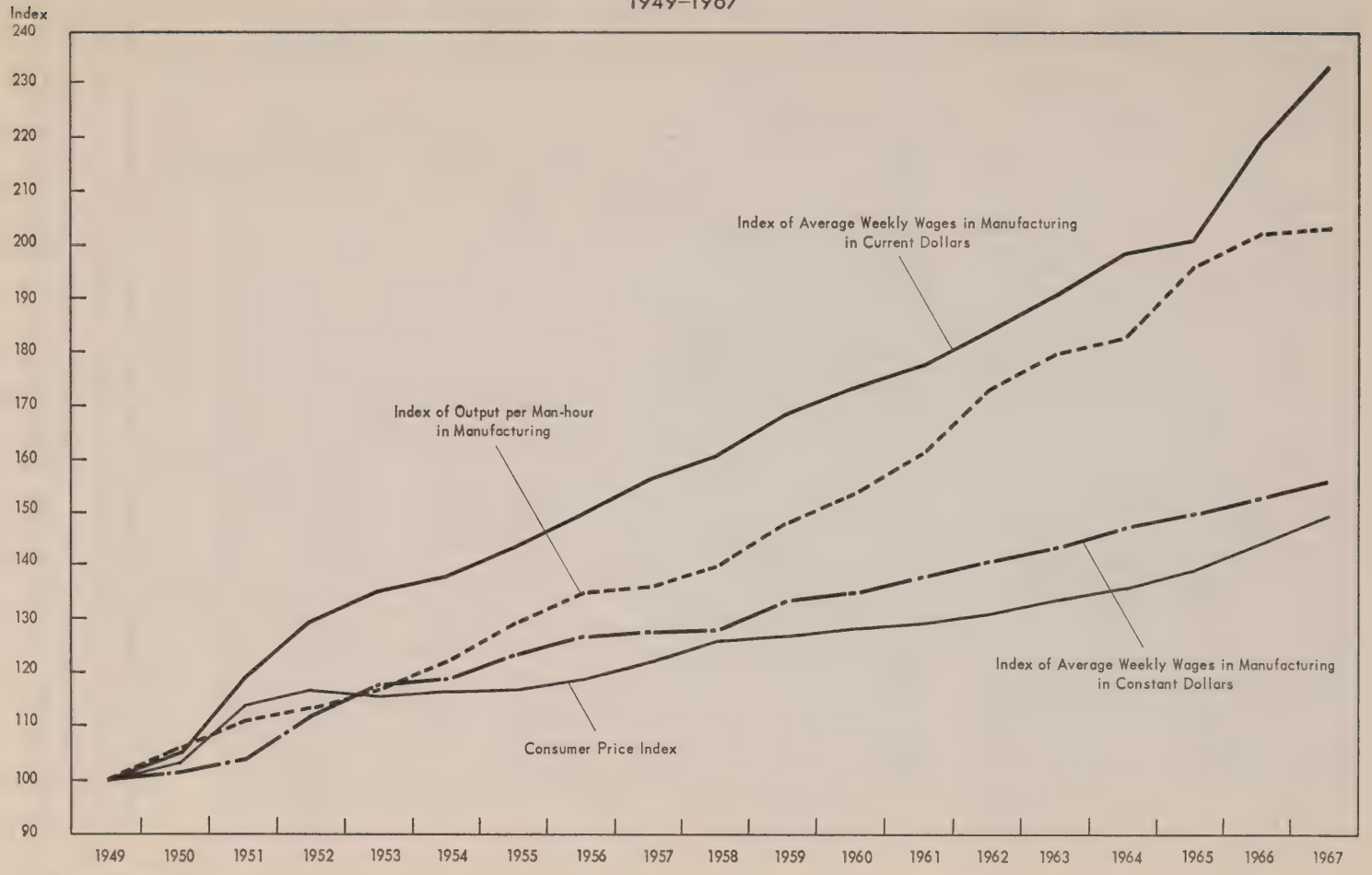
Column 2—Computed from Dominion Bureau of Statistics revised productivity estimates. See Dominion Bureau of Statistics *Daily*, October 28, 1968.

Columns 3 and 4—Canada Department of Labour, Economics and Research Branch, *The Behaviour of Canadian Wages and Salaries in the Postwar Period: A Graphic Presentation*, (Ottawa, Queen's Printer, 1967), p. 88, and Task Force computations for 1966 and 1967.

partial cause of such an increase in wages, something which itself is debatable, the increase may only be a sign or a symptom of inflation. By itself, wages rising faster than man-hour output proves nothing about the underlying problem. Indeed, in any inflationary situation it is usual for wages to rise faster than productivity. It is illogical to suggest that this relationship by itself proves anything about cause and effect.

Chart 8

CONSUMER PRICES AND WAGES AND PRODUCTIVITY IN MANUFACTURING
1949–1967



Source: Table 12.

219. Another misleading argument grows out of the tendency toward parallel movements in productivity and in real wages and salaries. This did not show up in Table 12 and Chart 8 because they only reflect data for manufacturing where productivity normally increases faster than real wages in order to offset other sectors of the economy where the reverse is the usual pattern. In the economy as a whole there must be a close link between productivity increases and wage and salary advances in real terms unless there is a change in the distribution of factor incomes. Despite the inevitability of a close link between productivity and real wage and salary movements, the fact that they rise together is sometimes cited as proof that collective bargaining is in no way responsible for any wage and salary cost pressure. Such an argument is untenable as it fails to account for current dollar wages and salaries, which are the more relevant data for the purpose of inquiries into the relationship between collective bargaining and inflation.

220. It is equally misleading to cite the sequence of any series of wage and price increases as proof of a particular explanation of inflation. For example, where wage increases precede price increases, it may be concluded that the former causes the latter. To draw such a conclusion from the timing relationship alone would be erroneous. A wage increase may force a price increase, but it may also serve as an excuse for one. This is suggested by the number of price increases following wage increases but which often more than make up for the rise in labour costs. In these situations, it is informative to explore why the price rise awaits the wage increase, since it is unlikely that the market would have been much less receptive to the price advance before rather than after the wage rise. The answer frequently lies in the public relations and politics of price setting. A price adjustment following a wage increase is easier to justify to both consumers and politicians. This, however, proves little or nothing about the cause of the price increase. It could be more a result of profit push than wage push. Moreover, even when the price rise is brought on by a wage increase, nothing is proved about the cause of that increase. It could be due to tight labour and product markets and thus demand forces, to an effective union, or to a combination of the two.

221. Where wage increases appear to follow price increases, equally erroneous interpretations could be made unless an effort were made to sort out cause and effect on the basis of something more than symptoms. Once an inflationary spiral begins it is usually extremely difficult to determine whether wage advances precede or follow price rises. The two are normally so interrelated that it is impossible to delineate a precise sequence.

222. Another illustration of the misconception that gains a disturbing degree of credence concerns the relationship between money wage and salary gains and productivity advances in particular situations. It is often suggested that as long as a group of workers extracts no more by way of wage and salary increases than the rate of productivity improvement in its sector, the group cannot be accused of contributing to inflation. This assertion is based

on the assumption that every group of workers will settle for a similar formula. This would be patently unacceptable to those who find themselves working in sectors of the economy where there is relatively little scope for productivity advances. Unless compelled to do so by administrative fiat or the forces of the market, they will not settle for that much less than their counterparts who are employed under opposite circumstances. The result will be an overall demand for wage and salary increases well in excess of the economy's total productivity advance. Not all groups will be successful in the pursuit of the demands they seek to emulate; yet the outcome cannot help contributing to inflation unless non-labour income recipients are willing to accept a relative decline in their position. Even if a wage and salary formula based on industry by industry productivity indices could be introduced, it would lead quickly to such an uneconomic and inequitable structure of incomes that it would soon collapse.

223. What can be said about the relationship between collective bargaining and inflation? Few points can be made without qualification. One could emphasize the incomplete coverage and fragmented and decentralized nature of collective bargaining and suggest that these characteristics serve to limit its power to defy the forces of the market. As noted above, support for this premise may be found in the evidence that over time geographic, industrial and occupational wage differentials move in response to the interaction of supply and demand. But the way these differentials respond to market pressure may or may not be compatible with non-inflationary wage and price behaviour; this information by itself produces no answers. It is in relation to this question that the results of collective bargaining are most open to question.

224. Although collective bargaining is not the only factor leading to downward rigidity of wages (another major consideration is administrative convenience), it has contributed to this phenomenon in varying degrees in different settings. To this extent it contributes to an unavoidable upward bias to the process of shifting differentials in response to supply and demand changes in the labour market. Because of collective bargaining and other significant social and economic forces, there are fewer sectors in the economy where wages move downward or do not rise when there is a decline in the demand for labour employed in those sectors. There is therefore less likelihood of wages levelling off, let alone declining, in contracting sectors of the economy to offset wage increases in sectors of expanding demand. Consequently, the only way the wage structure can adjust to changing supplies and demands for different classes of labour is by a ratcheting-up process.

225. In making this point we are not implying that the only effects of a downward-rigid wage structure are negative. It undoubtedly has its positive manifestations, such as the avoidance of serious morale problems and adverse expectations, and over a period of time it is conceivable that these affirmative effects outweigh its one serious distorting effect. It should also be

stressed again that in commenting on downward wage rigidity it is not our intention to suggest that complete downward as well as upward wage and salary flexibility in response to market forces should be society's objective. Some downward stickiness in the wage and salary structure is doubtless appropriate regardless of its influence on the inflationary problem.

226. At least as debatable is the proposition that unions contribute to upward wage and salary movement through collective bargaining even in the face of declining demand. This is a real possibility, as suggested by Table 13 which shows the average rate of wage increases and unemployment per year from 1953 to 1967 in negotiating units of 500 employees or more. These data reveal that wage increases slacken during years of relatively high unemployment but still remain substantial. The Economic Council of Canada interprets this as part of the normal behaviour of wages over the course of the business cycle:

> ... As the expansion proceeds, and well before it reaches its peak, unit labour costs begin to rise. This rise tends to be prolonged well past the the peak of the expansion, reflecting the fact that once a pattern of

TABLE 13

BASIC WAGE RATE CHANGES AND UNEMPLOYMENT RATES

1953–1967

Year	Base Wage Rate Changes[1] (Col. 1)	Unemployment Rates (Col. 2)
1953	3.9	3.0
1954	3.3	4.6
1955	4.0	4.4
1956	5.4	3.4
1957	6.7	4.6
1958	4.0	7.0
1959	4.2	6.0
1960	4.6	7.0
1961	3.5	7.1
1962	3.7	5.9
1963	3.3	5.5
1964	4.9	4.7
1965	5.6	3.9
1966	8.0	3.6
1967	8.6	4.1

[1]Average annual percentage changes in base rates for negotiating units of 500 or more employees (excluding construction).

SOURCES: Column 1—Alton W. J. Craig and Harry J. Waisglass, "Collective Bargaining Perspectives", *Relations industrielles/Industrial Relations*, Vol. 23 (1968) No. 4, page 587.
Column 2—Dominion Bureau of Statistics, *The Labour Force*, Catalogue No. 71–001.

spreading wage-rate increases is under way it may continue for some time even after output and employment have turned down and productivity growth has slowed.[21]

227. Part of the explanation for this phenomenon is found in collective bargaining. Some wages keep rising when unemployment increases because of earlier commitments made in long term agreements. Other wages undoubtedly increase because unions are strong enough to negotiate catch-up increases to make up for gains that have passed them by during their previous agreement. Still other wages probably increase for the reason that powerful unions are able to bargain more from employers than market forces would yield, either because such employers are confident that the government will validate the higher income claims or because such employers have discretionary power in their product markets to absorb or pass along the increased costs. Similar wage increases may occur in non-union as well as union sectors of the economy. This often happens in many unorganized service sectors where employment is growing and demand pressures are such that employers have to grant large wage and salary increases, which may be as large as or larger than those in the unionized sector, if they wish to attract and hold more labour. Nonetheless, large increases in unorganized areas of the economy tend to weaken the argument that collective bargaining is a major cause of a continuing rise in wages in the face of an overall decline in the demand for labour.

228. What is the effect of collective bargaining in individual industries and firms? Here again there is much controversy. It is hard to prove categorically that unions can exercise independent cost pressure at these levels. Several possible tests might be run, given the required data, but none would be conclusive. In all probability there are instances where unions create cost-push pressure at the micro level. What is not known is how extensive such pressures are and how much they affect the total situation.

229. It seems clear that the potential impact of collective bargaining on inflation depends largely, but not exclusively, on the state of the labour and product markets within which it operates. Like any other institutional force, the influence of collective bargaining is enhanced by bottlenecks and market imperfections regardless of their nature or derivation. Bottlenecks give rise to pressure points which may be exploited by those supplying the factor or commodity in short supply. The same is true of market imperfections where the link may be even more direct since the cause of the imperfection may be a trade union practice or the outcome of collective bargaining. Trade unions, for example, may interfere with the effective operation of the labour market by restricting entry into their sphere of influence. Regardless of their cause, bottlenecks and market imperfections can seriously aggravate any independent effect collective bargaining may have on the price level.

230. Two recent series of settlements that attracted wide attention indicate the complex way in which institutional pressures, bottlenecks and mar-

[21] Economic Council of Canada, *Third Annual Review: Prices, Productivity and Employment, op. cit.*, pp. 99-100.

ket imperfections interact on and through collective bargaining to produce potentially inflationary consequences. The first revolved around the so-called "Pearson formula" and the second the attainment of United States wage parity in the automobile industry. In each case it is difficult, if not impossible, to sort our the respective roles of institutional and economic forces, but the effort to do so is instructive.

231. The meaning of the Pearson formula was seldom made clear by those who employed the term. It appeared to come into considerable use following the repercussions that the two-year 30 per cent settlement for seaway workers in 1966 had upon subsequent negotiations in other industries, particularly the railways. There was much criticism of the size of these settlements, of the pattern they were alleged to have created, and of the apparent degree of government involvement.

232. The wage package in these settlements was large by then current standards. It is impossible to explain them by reference to either market or institutional forces in those industries alone. To the extent that any pattern did emerge during this period, it owes its derivation not to the seaway settlement but to the three-year contract which was negotiated in the Montreal construction industry during the buildup for Expo '67. This settlement granted an increase of approximately 30 per cent to skilled trades and at least another ten per cent to labourers. The Expo complex, combined with the related transportation and accommodation facilities which had to be completed before its opening, put a serious strain on the manpower resources available to the construction industry in the Montreal area. The result was sectoral demand pressures which would have produced a large wage increase even in the absence of unions. Their presence, and especially the rivalry between the Confederation of National Trade Unions and the international building trades unions, may have ensured that the increase was larger than it would have been, but that is difficult to verify. Thus, the Pearson formula began in a situation where strong upward market pressure had produced a bottleneck which would have led to large increases regardless of any union impact.

233. The Montreal construction settlement influenced the Montreal-Quebec-Trois Rivières longshoring negotiations before it had any effect on the seaway negotiations. Despite the fact that in neither situation did it appear that there was anything like the demand pressure which affected the Montreal construction pact, it again took a 30 per cent increase to settle the disputes. Furthermore, in these cases the 30 per cent was applied over two rather than three years. There was pressure on the Montreal port because of large exports of wheat and imports of critical Expo materials, but these pressures do not seem to have produced any shortage of port labour. In the case of the seaway workers, there was no outward sign of a bottleneck or market imperfection unless one assumes that the United States-Canadian wage differential for these workers falls into either category. In both cases, the desire of the unions and workers involved to catch up with other wage

increases which had occurred during the life of their previous agreements, and to provide a hedge against inflation, probably played a big part. It should also be noted that the longshoring increase was supposedly[32] contingent upon a co-operative undertaking to increase productivity substantially.

234. The seaway settlement had a marked "demonstration effect" on the non-operating railway negotiations. All hopes of a tentative settlement around 18 per cent over two years were dashed when the seaway settlement was announced. The country was then confronted with a three-week national strike which ended only after Parliament ordered the men back to work with an interim increase of 18 per cent under a formula which amounted to "mediation to finality". The ultimate terms of settlement included a 24 per cent increase over three years; the 30 per cent floor was broken. More significant was the three-year term of the agreement.

235. The striking feature in this sequence of events is the importance that was attached to the overall increase regardless of the duration of the agreement. This illustrates the vagueness of the Pearson formula and helps to explain why its demonstration effect led to such disparate results in many different situations. Rather than establishing any kind of fixed pattern, it may only have created an atmosphere in which large settlements were almost taken for granted. One has only to discuss this subject with leading union and management representatives who negotiated in the wake of these settlements in order to appreciate their widespread influence on worker expectations. To the extent that these expectations affected union demands and bargaining power in all manner of situations, the repercussions of the formula are probably still being felt.

236. In the meantime, another wage standard came to the fore, that of United States parity. This standard is not new. Relatively small groups of iron ore, steel, can, and pulp and paper workers have enjoyed United States rates in some parts of the country for many years. So also have workers on remote projects where higher than average rates have been necessary to recruit and retain employees. But the standard is enjoying increased popularity in the sense that it has become a serious target for more unions. United States parity attained this new relevance from the breakthrough by the United Automobile Workers (UAW) in the auto industry. In this case, and in others where unions have sought to emulate the auto-workers' achievement, a varying combination of institutional and market forces was again at work.

237. In automobile manufacturing, the power of the union is not to be neglected. The Canadian Region of the UAW is powerful in its own right, but it took the full resources of the international union to attain wage parity. It was not until the international union made parity an issue in American negotiations that the auto companies conceded the issue. They probably would not have done so then but for the Canada-United States Agreement

[32] Apparently this increase in productivity had not been forthcoming. See The Honourable Bryce Mackasey, "Statement at a Press Conference at the Port of Montreal", Montreal, October 10, 1968, mimeographed, p. 6.

on Automotive Products, which not only created a common market for automobiles and parts so that the auto companies could more efficiently integrate their total North American operations, but also helped the companies to finance this improved integration by providing them with substantial rebates on relatively high tariff duties. Its effect was to strengthen the union's desire for parity and to reduce the companies' willingness to resist it. The result was parity, but in Canadian rather than United States dollars.

238. Equally interesting were the results of two other union attempts to imitate the auto workers' success. The outcome of these efforts largely reflects the relative economics of different situations. In the case of Massey-Ferguson Limited, the UAW did not achieve parity as it did in automobile manufacturing despite the long history of a common market for agricultural implements. Apparently the economic constraints in this case caused the company to state that it would shut down its Canadian operation rather than grant parity. In the end, the union settled for considerably less than it had achieved in the automobile industry. In the other case, inter-city trucking in Ontario, the Teamsters gained complete wage parity. The union obviously applied much pressure; but it could not have attained its goal had not the trucking companies felt they could absorb the cost, or at least pass it on to their customers. In this instance the market did not play the constraining role that it did in the preceding case, and the scope for discretion by both parties was much enhanced.

239. Before summarizing our views on the relationship between collective bargaining and inflation, it is well to add a major qualification to the sequence of events we have just analyzed. Although the demonstration effects of certain large settlements appear to be great in some situations, one should not exaggerate the extent to which these effects are diffused throughout the economy. Real limits to the demonstration effect are suggested by an examination of Canada Department of Labour statistics on settlements in negotiating units of 500 or more employees during the period when the above construction, longshoring, seaway and railway settlements occurred. These data show settlements over different contract terms ranging from 4 to 71 per cent and averaging something less than 20 per cent.[33] Many of these settlements were probably larger because of the so-called Pearson formula; but most did not approach the magical figure of 30 per cent, and it is impossible to say how much larger they were because of the formula than they would have been in its absence.

(4) Summary

240. The role of collective bargaining in the inflationary process must be seen in the context of our earlier review of the major theories of inflation. None of these schools explains everything; but there is an element of truth in each.

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[33] Canada Department of Labour, Economics and Research Branch, "Collective Bargaining Review", Supplement to *Labour Gazette*, No. 7, 1967.

241. To the extent that demand pressures are the underlying cause of a period of inflation, collective bargaining tends only to serve as one of many possible mechanisms through which inflationary forces are transmitted. In such a situation, collective bargaining may help to retard the rate of inflation through long term agreements which temporarily hold wages below the level to which the forces of the market could drive them.

242. According to the cost-push theory of inflation, collective bargaining is one of many institutions which can exercise independent upward pressure on incomes, costs and prices. At the micro level it is difficult to refute the fact that there are situations where wages are driven up by individual unions beyond the rate which the existing constellation of market forces would have produced. Where this happens, however, it usually indicates that the employers affected either have some discretionary power in their product market which they are able to exploit to the mutual advantage of themselves and their workers, or that they are confident of sufficient monetary expansion to take up any slack. In the absence of such market imperfections or demand expectations, the scope for independent union cost pressure would be considerably lessened. The existence of market imperfections allows those sharing the results of discretionary market power to appropriate to themselves most of the productivity gains that accrue in their particular sectors of the economy.

243. At the macro or total economy level it is more difficult to document the existence of cost-push pressure emanating from collective bargaining independent of any cumulative effect it may have at the micro level. Such pressure is indicated but not proved by the observance of substantial though lower wage settlements when cyclical economic indicators, such as the unemployment rate, show an absence of demand pressure. This was documented, though not fully explained, by the Economic Council of Canada in its cyclical analysis of the problem. Barring a more definitive answer, one cannot dismiss the possibility that collective bargaining has cost effects at the macro as well as the micro level. Indeed, depending on how extensively unions push up wages at the micro level, there will be some macro impact since, to a significant extent, it is the aggregation of a series of micro effects.

244. Another indicator of the potential impact of collective bargaining on inflation is to be found in the part that it plays in the demand-shift or structural model of the inflationary process. This theory draws heavily on the constantly changing composition of demand. As a result of older parts of the economy reviving, or new ones opening up, there are periodic sectoral booms which produce bottlenecks and excessive demand pressure. Like other institutions which find themselves in such a setting, unions can take full advantage of the opportunity to negotiate exceptionally large settlements. These, in turn, often serve as targets for unions in less buoyant parts of the economy which demand and sometimes win greater advances than would otherwise have been possible. Even stagnant or declining sectors of the economy can be confronted with settlements that would not take place in a competitive

model. The result is a downward-rigid and upward-flexible wage structure that can adjust only to shifting labour force requirements by a ratcheting-up of wages.

245. As a cause of inflation, collective bargaining is only one of many institutional pressures that make it more difficult to maintain reasonable price stability while ensuring a high level of employment. In the short run at least, these pressures would operate to inhibit the normal checks and balances of the market place from functioning as effectively as they might. The results of such pressures could be undone by sufficient slackening of aggregate demand, but this would only work if the whole problem could be construed solely as a demand problem.

246. Our conclusions about the causes of inflation, and particularly about the role of collective bargaining in the inflationary process, will disappoint those who seek a single culprit, and especially those who see the labour movement as the prime candidate for this honour. The problem is too complex for such a simplified solution.

CONCLUSION

247. What we have tried to demonstrate in this Part is that it is extremely difficult to show a direct causal link between unions and collective bargaining on the one hand and the inflation and trade-off problems on the other. The relationship between collective bargaining and inflation is especially troublesome. If collective bargaining is the major villain in the piece, this should appear in a variety of tests. Yet there is no conclusive evidence to this effect. This does not mean that collective bargaining has no effect on inflation. Collective bargaining does affect costs and to that extent has an impact on prices. But this is true of numerous other factors, and there lies the difficulty. It is virtually impossible to sort out the relative influences of the many forces which affect the price level.

248. This means that collective bargaining does not stand redeemed or condemned on the basis of its impact on inflation and the trade-off. The case is not strong enough either way to take a fixed or dogmatic position. If collective bargaining is to be put on trial, other grounds for arriving at a clear verdict must be found. Such grounds are suggested in Part Four where we offer a critique of the present collective bargaining system.

249. We shall return to the relationship between collective bargaining, the trade-off and inflation in Part Five, where we offer observations and recommendations in these areas and in many others.

PART FOUR

CRITIQUE OF THE PRESENT COLLECTIVE BARGAINING SYSTEM

CRITIQUE OF THE PRESENT COLLECTIVE BARGAINING SYSTEM[1]

250. This appraisal of the performance of the collective bargaining system covers limitations inherent in the process which should not be judged as completely remediable, and shortcomings in the system which warrant careful scrutiny and corrective action. It provides much of the base for our recommendations in Part Five.

IMPLICATIONS OF THE SYSTEM'S LIMITED COVERAGE

251. Even with a broad definition, trade unionism and collective bargaining embrace less than one-half of the paid non-agricultural work force. This limited coverage gives rise to a number of questions, several of which relate to the statutory framework within which collective bargaining is normally conducted. These questions concern the coverage of the existing labour relations acts and the extent to which the acts protect and assist workers in exercising their basic rights to organize and to act collectively.

252. As for the comprehensiveness of the applicable legislation, there are many exemptions in the statutes. Where the exempted group is covered by special enabling legislation, as is often the case for police and teachers and other public servants, they are not usually denied legislative support if they choose to bargain collectively, though they are subject to a different set of rules. This disparity leads to a more fragmented approach to industrial relations than is either necessary or desirable, given the goal of consistency of policy.

[1] Throughout this Part of the Report there are many general references to various provisions in the labour relations Acts in the federal and provincial jurisdictions. For more detailed references to Canadian collective bargaining statutes and for comparative analysis see Edith Lorentsen and Joel Bell, *The Development of the Public Policy on Labour Relations in Canada,* Task Force Study; and A. W. R. Carrothers, *Collective Bargaining Law in Canada,* (Toronto, Butterworths, 1965).

253. More disturbing are exemptions which apply to certain groups, such as the traditional professions of law and medicine, and agricultural and domestic workers, where no alternative legislative framework is provided. In some cases, as in many of the professions, this deprivation works no hardship on the group itself because it is strong enough to look after its interests without collective bargaining legislation; although not usually without statutory authority to administer an exclusive licensing arrangement. More often than not, the danger in these instances is to the public, since these groups are seldom subject to the same series of checks and balances as unions operating under the labour relations acts and, unlike unions, often confront no opposing force in the form of an organized employer of their services.

254. At the other extreme are workers who have no recourse to protect their interests aside from the right to quit. It is difficult to find a valid rationale for exemptions which apply to agricultural workers and domestic servants. If collective bargaining is to be supported by public policy, its benefits should be made available to as many groups as possible on an equal basis. Where particular problems arise, as in the case of "dependent contractors",[2] special provisions under the legislation rather than total exemption can provide a more defensible alternative.

255. Under present legislation, so-called managerial (including supervisory) employees and those having access to confidential industrial relations information are excluded from all bargaining units.[3] Although the principle behind some of these exclusions is understandable, in practice there sometimes appear to be far more than necessary. In the Canadian Broadcasting Corporation, for example, where all of the eligible employees are organized, about one-quarter of the total work force is excluded.

256. Within the present framework, workers are protected from management retaliation in the exercise of their rights to organize and bargain collectively. One of the most serious problems arises when union activity is an alleged cause of dismissal.[4] Bearing in mind the diffculty such cases entail, we have been impressed by the record of enforcement of those parts of the legislation designed to curb such practices. In particular, we note with approval the use of mediation as a preliminary step in the handling of such cases, the tendency to place the burden of proof on the employer to show cause for dismissal, and the policy of reinstating with back pay persons improperly discharged. It is questionable whether the prohibition in the *Criminal Code* against discharge for union activity is necessary.

257. Another provision in the federal legislation directed at the protection of workers in the exercise of their rights is the prohibition against the certification of employer-sponsored or company unions. Other provisions may be found in both the federal and the provincial statutes. For example, a

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[2] See Part Two, paragraph 90.

[3] See Robert Rogow, *Supervisors and Collective Bargaining,* Task Force Study.

[4] See Innis Christie and Morley Gorsky, *An Exploratory Study of the Efficacy of the Law of Unfair Labour Practices in Canada,* Task Force Study and A. W. R. Carrothers, *op. cit.*

special provision in some provincial statutes protects the employment status of workers while engaged in legal strikes. Although the law in this respect varies from jurisdiction to jurisdiction, here again it appears to be serving its intended purpose reasonably effectively, in spite of difficulties of interpretation which inevitably arise.[5]

258. The labour relations acts and those in charge of their administration appear to be providing adequate protection for workers in the exercise of their rights; it is nevertheless debatable whether they go far enough to facilitate the extension of such protection to unorganized workers. For example, no act other than the Quebec *Labour Code* assures union organizers the right of access to remote company operations with room and board, if necessary, supplied at the same rate as to the employees. Yet such access can be essential if workers are to enjoy fully their right of association. Similar access during non-working hours may also be required in less remote locations.

259. Also worthy of consideration is the degree of support required for a union to gain certification with or without a vote. All jurisdictions in Canada now have fairly complex formulae governing these matters. One of the more complicated approaches is to be found in Ontario where a union may secure a certification vote if it is able to show membership support of at least 45 per cent in the appropriate bargaining unit. If the union has over 50 per cent but less than 55 per cent, it can be certified without a vote at the discretion of the Ontario Labour Relations Board. If it has over 55 per cent, it is invariably certified without a vote unless evidence casts doubt on its support.

260. The challenge in this area is to find a formula which best reflects the wishes of the employees. In addition to the variety of practices in the different jurisdictions, there are two other major possibilities. One would be to require a secret ballot vote in all cases. This would tax the already overburdened staffs of the boards and is probably more than is required. Another possibility would be to lower the level of support at which a union can request a vote but widen the range above that within which a vote would be mandatory. This would reduce the possibility of either side using unfair but not easily detected tactics designed to frustrate a determination of the true wishes of the employees.

261. Once a certification vote is ordered, practices in the different jurisdictions are common except in one respect. All jurisdictions normally conduct a secret ballot vote at the work place; however, in all but a few jurisdictions a decision on a certification ballot is taken on the basis of a majority of those eligible to vote. In effect, those who do not vote are counted against the union. The assumption behind this policy appears to be that a certificate should not go to a union which is supported by less than 50 per cent of the eligible employees because it would be ineffectual in bargain-

[5] *Ibid.*

ing. Although this view has some merit, and few certifications may be lost because of the practice, union representatives are strongly opposed to the requirement on the ground that it applies in no other kind of election. This practice also detracts from the secrecy of the ballot in that those who do not vote may be viewed as opposing the union or unions involved. Largely because of these criticisms a few jurisdictions have amended their acts to make the governing factor the majority of those voting, provided that more than a given percentage of employees cast a ballot.

262. Union representatives have also been critical of delays which occur between an application for a certification vote and the balloting. Fairly lengthy delays are sometimes unavoidable because of the complexities of the issues that can arise in the course of designating the appropriate bargaining unit, establishing the degree of union support, and so on. In the interval, the work of the union and its supporters may be undone by growing apathy or frustration among the workers or by hostile activities on the part of the employer. To avoid these possibilities, the Ontario Act provides for a pre-hearing vote, on the request of a union, the results of which are not counted until the Board's hearings are complete and a vote has been ordered.

263. Another impediment to union certification can occur when two or more unions are in competition for the support of a particular group of workers. If only one vote is held and no union is certified unless it receives a majority of those voting or eligible to vote, the ballot results in no certification although a majority favour a union of some kind. The rationale for this approach is that one of the competing unions should have to garner majority support before any union is certified. It would be equally defensible to hold two ballots or a combined ballot to determine whether the employees want a union and, if they do, which one they would prefer.

264. Certification or voluntary recognition is not necessarily the end of the matter so far as the union's legal status and bargaining rights are concerned. In the absence of protection, its position may be lost if either the union or the employer undergoes a change of name, merges with another organization, or is otherwise transformed. To protect an organized group of employees against such an eventuality, most provincial jurisdictions now have a successor rights clause in their legislation to protect a union's position against virtually everything but a complete change in the nature and purpose of the employing enterprise. All the provinces except Ontario also protect the outstanding collective agreement in such a situation. Only in the federal Act is there no successor clause whatever.

265. There is one basic ground on which a union should forfeit its right to act as the exclusive bargaining agent for a group of employees in a designated bargaining unit. That is when the union loses the support of the employees. All labour relations acts in Canada have established procedures whereby a group of disenchanted employees may petition for a vote to determine whether the incumbent union should continue to represent them. Similar machinery is available to a rival union to oust an

incumbent union should the employees change their allegiance. All the acts provide for decertification of a union or termination of its bargaining rights where recognition is gained by fraud. Some acts also provide for an application by an employer to oust a union which he believes has lost the support of his employees. Similarly, when a union is "sleeping" on its rights, that is, failing to exercise its bargaining rights, a few statutes provide that the employer may apply for its decertification. In all these areas the legislation appears to be working reasonably well. Nonetheless, a number of issues remain. Among them are the range of grounds on which decertification or other termination of recognition should be available, the relative ease of access to either, the role of petitions, and the danger of employer inspired decertification or termination proceedings. The problem here, as in so many other parts of the legislation, is to ensure that overriding consideration be given to the wishes of the employees.

266. Regardless of how conducive to the exercise of the employee's right to organize into unions and bargain collectively protective and facilitating measures are, it is unlikely that the entire labour force will ever avail itself of that opportunity. There will undoubtedly remain a need for other institutions besides collective bargaining to accommodate differences between employers and employees that are not satisfactorily resolved by the impersonal operation of the labour market or by personnel policies and practices unilaterally imposed by management. As noted in Part Two, a variety of labour standards programs have been established in all jurisdictions in Canada for this purpose.[6] In addition to the problems discussed earlier, these programs can also give rise to difficulties when they affect the results of union-management accommodations.

267. Beyond the maintenance of decent minimum standards, it seems reasonable that a standards program should be designed in such a way as to interfere as little as possible with the outcome of collective bargaining. Otherwise, the effect is to upset the delicate series of trade-offs at which the parties invariably arrive in the course of compromising their differences and negotiating an acceptable settlement. In so doing, the superimposed standards cannot help jeopardizing the balance of power that gave rise to the settlement, thus doing an injustice to one party. A possibility is to postpone the application of such standards until the expiry of existing collective agreements where there is a conflict between the two.

268. The risk of interference by a standards program with the results of collective bargaining is all but eliminated under both the Quebec decree system and the industrial standards programs of the other provinces; in each case the standards established are based on the terms and conditions of employment negotiated by the predominant unions and employers. Such interference is more likely to occur in the case of a comprehensive minimum-wage and maximum-hour program because it cannot be tailored to the

[6] See Canada Department of Labour, Legislative Branch, *Labour Standards in Canada*, Annual.

individual characteristics of different industries. This is especially true of hours of work in the federal jurisdiction since practices vary widely in the industries falling within its sphere. This became apparent when the *Canada Labour (Standards) Code* was introduced.[7] The miinmum wage established under the Code caused virtually no difficulty, but the hours provisions upset established patterns agreed on by unions and managements in a number of industries over the years. The resulting objections led to a greater number of temporary exemptions than had been anticipated.[8]

269. Some of this difficulty could have been avoided through more advance notice and consultation with labour and management before the Code was implemented. Even more difficulty could have been avoided by a more selective industry-by-industry approach. Either way, a more generous and workable combination of wages and hours protection might have been worked out in most, if not all, industries.

COMMITMENT TO AND ACCEPTANCE OF THE SYSTEM

270. In this section we differentiate between commitment to and acceptance of collective bargaining in principle, and commitment to and acceptance of the existing framework of rules and regulations as laid down by legislation, judicial interpretation and administrative application. In both respects, though to a greater degree on the union than on the management side, lies a potentially dual role of the parties. They are each indispensable agents within the present collective bargaining system and within our total socio-economic-political system. Yet they may be seeking, at the same time, to transform the present collective bargaining system and to pursue other social, economic or political goals.

271. What are the attitudes of the parties toward the principle of collective bargaining? Virtually all leading employer organizations, including The Canadian Manufacturers' Association and The Canadian Chamber of Commerce, proclaim that collective bargaining is an essential part of Canada's present socio-economic-political system. Typical of their recent pronouncements on the subject is the following passage from the Chamber's summary of its oral submission to the Task Force: "The Chamber believes that collective bargaining is the best method in our economic and industrial system of determining wages and working conditions . . . ."[9]

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[7] See the Murchison Industrial Inquiry on the Trucking Industry and the Hughes Industrial Inquiry Commission on Shipping in Newfoundland for examples of two industries which encountered problems in the application of the hours provision of the Canada Labour (Standards) Code.

[8] For a report on the number of deferments see Canada Department of Labour, *Sixty-seventh Annual Report for the fiscal year ended March 31, 1967,* (Ottawa, Queen's Printer, 1968) p. 26.

[9] The Canadian Chamber of Commerce, *Submission to the Task Force on Labour Relations,* (Montreal, April 1968), p. 1.

272. In its brief to the Royal Commission Inquiry into Labour Disputes in Ontario, which The Canadian Manufacturers' Association also submitted to the Task Force, the Association states that "free collective bargaining should be retained as a basic standard in our society."[10]

273. We are convinced that these are deeply held views which reflect a realization on management's part that modern-day capitalism could not survive without free collective bargaining and an independent trade union movement. What applies to these central organizations, however, does not necessarily apply to all their affiliated enterprises, let alone to non-member firms and individual employers.

274. At the firm or plant level, where actions speak louder than words, there tends to be a divergence between large unionized enterprises and small non-union operations. The former often acknowledge that it would be hard to get along without a union to speak for their employees, although this view may not represent wholehearted acceptance of collective bargaining. Small non-union establishments frequently are suspected of opposing any form of organized labour; and evidence is offered of alleged discriminatory discharges, reluctance to recognize a union even when it has a majority standing, and failure to bargain in good faith. Documentation of such events is difficult because of data limitations and obstacles to detection. What comes to the surface, therefore, may represent only a small part of the problem.

275. On balance, we do not believe that most employers have a very positive orientation toward trade unions and collective bargaining. Although employers in general are prepared to accept the fact that these institutions are indispensable instruments in a modern industrial liberal democratic state, the majority would be more than pleased if they were to restrict their activities or confine them to enterprises other than their own. To the individual employer, activities of unions are seen as one more force, along with some of the activities of suppliers, customers, government officials and politicians, making business more complicated. It is, therefore, not surprising that at the enterprise level employer reaction toward unions and collective bargaining should range from positive approval, through reluctant acceptance and grudging toleration, to outright rejection.

276. Among unions, acceptance of the collective bargaining process is almost universal. With rare exceptions, labour leaders have faith in Canada's existing socio-economic-political system as the most viable one available for the present and the immediate future, even though they may consider that it should be applied increasingly to the resolution of contemporary social problems.

277. Although the acceptance of the collective bargaining process is general, union leaders may view it in different ways. Some see it simply as a means for workers to secure a greater share of the fruits of economic

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[10] The Canadian Manufacturers' Association, Ontario Division, *Submission to the Rand Commission Inquiry into Labour Disputes in Ontario,* (Toronto, January, 1967), p. 54.

progress. Others, while accepting the process for this purpose, are using collective bargaining as an instrument for bringing about gradual changes in the enterprise system and, indirectly, for modifying the existing order and paving the way for a new one.

278. There is also a fringe element more interested in revolutionizing than reforming the present socio-economic-political system; they are as extremist as many employers who accept the collective bargaining system because they cannot do otherwise. But the members of this union group are in a minority and their influence will not likely become significant unless circumstances change dramatically. For the vast majority of union members and leaders, collective bargaining is a vehicle for worker advancement within the system.

279. When it comes to existing rights and responsibilities of the parties, both labour and management have reservations. Some managements are convinced that the legislative pendulum has swung too far in favour of labour. To quote again from the submission of The Canadian Chamber of Commerce:

> ...We believe that the collective bargaining mechanism works best when there is a reasonable balance of power between management and labour and that the key to the protection of the public interest in this sphere lies in the preservation of such balance. We also believe that the balance is currently lacking and that this is the source of much of our recent and current difficulty.[11]

280. Many employers appear to feel that they are today no match for most unions; and that lack of enforcement of the law aggravates what would be an imbalance against their own and the public interest even in the absence of illegal behaviour. As examples of the latter, management spokesmen cite unlawful stoppages over recognition, jurisdiction, grievance and contract disputes, mass picketing, secondary boycotts and violence, all of which they suggest have increased in recent years. To correct the situation, employers demand more effective enforcement of the law and changes in the law designed to bring about a fairer balance between labour's rights and responsibilities.

281. Organized labour is equally vociferous in its complaints about imbalance. Unions criticize the purported ineffectiveness of bans against discriminatory treatment for engaging in union activity; delays in existing certification, conciliation and arbitration procedures; the tendency toward more final and binding state intervention in contract disputes; and the resort by employers to injunctive relief. Particularly in the latter area they see an unwarranted bias in the law in favour of property as opposed to individual rights. Aside from providing them with a certification procedure directed to their interest in securing recognition by employers, unions argue that the law is against them to the point of preventing prosecution of their members' interests.

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[11] The Canadian Chamber of Commerce, op. cit., pp. 1-2.

282. Illustrative of organized labour's general apprehension about the state of the law is the following statement by the Canadian Labour Congress which appeared in its 1967 memorandum to the federal cabinet:

> To the extent that a government lends itself to wage restraints or interferes with the free exercise of collective bargaining, that government is to all intents and purposes allied with the employers against the trade unions. Threats of restrictive legislation serve merely to emphasize this point. The widespread use of injunctions, the jailing of trade unionists as a consequence of injunctions in labour disputes, the extension of compulsory arbitration wether by federal or provincial action, inevitably lead trade unionists to the conviction that the state, far from being neutral, takes sides and that it is not taking the side of the wage earner.[12]

283. We address ourselves to the merits of these claims and counterclaims later in this Report. Unions and management are bound to have divergent views on the collective bargaining system. Neither in principle nor in practice can any such system hope to command universal acceptance. But the process cannot survive without something approaching a general consensus regarding its underlying premises. A similar though less demanding and universal consensus must be maintained with respect to the prevailing legal parameters of the system. At the same time, a free society must tolerate and expect some dissent no less in this area of public policy than in any other. The challenge is to maintain a minimal degree of consensus with respect both to the fundamental tenets of the industrial relations system and to its current operational framework of rules and regulations without which it cannot hope to endure.

VARYING EFFECTIVENESS IN RELATION TO DIFFERENT ISSUES[13]

284. Originally collective bargaining dealt only with a limited range of substantive issues. It was exceptional for unions and management to negotiate anything beyond wages and hours and a few basic working conditions. In the face of a threatened or actual test of economic strength, it was a matter of accommodating the positions of the two parties on a few relatively straightforward issues.

285. Over the years an increasingly complicated range of issues has found its way onto the bargaining table. The introduction of elaborate fringe benefit schemes, especially in the health, welfare and pension fields, and intricate job and income security arrangements, have forced the parties into more sophisticated relationships requiring something beyond crisis bargaining.

286. It is important to understand why these have become bargainable issues, as well as to appreciate the strengths and limitations that are

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[12] Canadian Labour Congress, *Memorandum to the Government of Canada*, February 8, 1967, p. 7.

[13] See Felix Quinet, *Issues in Collective Bargaining*, Task Force Study.

inherent in such an approach to the problem. To a large extent, both fringe benefits and job and income security arrangements have been demanded by unions because of public policies that they believe to be inadequate.[14] Because governments on this side of the Atlantic, unlike their counterparts in Europe, have been less inclined to develop public social security schemes, groups of North American workers were driven to demand, through their unions, their own little islands of private social security. As a result, so-called fringe benefits in many cases now add up to over 25 per cent of payroll costs.[15] Similarly, because Canada has only recently begun to develop a comprehensive manpower training, income maintenance, and relocation scheme, labour has had to strive for various forms of job and income protection through collective bargaining.[16]

287. Later in this Report we appraise the results of these efforts in more detail. We conclude that while there are some advantages, especially in terms of flexibility, in attempting to deal with such issues through collective bargaining, there are also some distinct disadvantages. In the field of fringe benefits, for example, the result has been a proliferation of private plans with varying standards in terms of the levels of benefits, the degree of vesting and funding, and the availability of economies of scale. Against the adaptability characteristic of the present approach must also be recorded their uneven incidence and their relatively small and uneconomic base of operations. Collective bargaining has a role to play in this area, but not an exclusive one.

288. Equally questionable is the heavy onus placed on collective bargaining in relation to adjustments made necessary by technological and other change. Again, as our later appraisal shows, collective bargaining has made and doubtless will continue to make a major contribution to solutions to problems of change. But it has distinct shortcomings growing out of its limited coverage of the labour force, the varying incidence of technological change provisions, and the uneconomic and inequitable nature of many of those provisions. Especially where displacement is involved, the appropriateness of relying on collective bargaining to cope with the resulting social consequences must be called into question.

289. Collective bargaining has yet to be brought to bear on the problems of job dissatisfaction and alienation from work. Should workers begin to use their unions and collective bargaining to demand more meaningful and gratifying employment, it is debatable whether the process could rise appropriately to the challenge. Indeed, under some circumstances unions, if not collective bargaining itself, might prove a hindrance. For example, an employer's interest in job rotation or job enlargement could be thwarted

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[14] Fringe Benefits first came into prominence during World War II when wage and price controls led unions to seek non-wage gains. To this day these are also considerations which sometimes lead unions to place more emphasis on fringes than on wages.

[15] The Thorne Group Ltd., *Fringe Benefit Costs in Canada,* (Toronto, Annual).

[16] See Arthur Kruger, *Human Adjustment to Industrial Conversion,* Task Force Study; and Felix Quinet, "Collective Agreement Provisions Regarding Technological Change", *Relations industrielles/Industrial Relations,* Vol. 21, (1966) No. 3.

because of employee or union insistence that if workers are to perform a wider range of tasks, even at the same general skill level, they must be paid more.

290. Collective bargaining cannot be expected to accommodate all employer-employee problems equally well. Reason and experience show that its effectiveness in relation to different issues varies widely. Just as the limited coverage of collective bargaining requires that other devices be instituted to govern relations between those not covered by the process, so also does its limited scope suggest the same need in relation to issues where it cannot completely handle the basic problem.

COLLECTIVE DETERMINATION OF TERMS AND CONDITIONS OF EMPLOYMENT

291. A principal objective of the collective bargaining system is to provide workers with a means of participating, either directly or through their chosen representatives, in the determination of their terms and conditions of employment. The collective bargaining process becomes a means of legitimizing and making more acceptable the superior-subordinate nexus inherent in the employer-employee relationship. Accordingly, the actual impact of collective bargaining on the well-being of workers may not be as important as its potential impact.

292. It is extremely difficult to determine the independent effect of unions and collective bargaining upon labour's share of the total revenue available to an individual enterprise. Earlier we suggested that there is evidence to indicate an initial impact of some significance in many situations. Certainly the narrowing of differentials between similar enterprises following employee organization supports this conclusion. But seldom are the surrounding circumstances clear. The problem of separating institutional and market forces is difficult and all one can say with confidence is that collective bargaining can have a noticeable effect within existing economic constraints. Thus, to the extent that an enterprise is paying less to its workers than it would be willing to pay and still stay in business, there is reason to believe that unions can get the difference from the employer. Beyond this, the impact of collective bargaining becomes debatable. Unless a union can change the enterprise's upper wage limit by manipulating the environment, either on its own or in concert with the employer, there is a ceiling above which unions can seldom exercise much control.

293. Regardless of the impact of collective bargaining on the total cost of wages, hours, working conditions and fringe benefits within a particular bargaining unit, the process has had an influence on their distribution. Historically, collective bargaining has tended to have a major bearing on the average number of hours worked by day, week, year and even by lifetime. More recently its effect has been felt in the field of fringe benefits, which now

encompass everything from pension and health and welfare plans to such matters as maternity leave and supplementary pay for jury duty. As indicated earlier, the cost of these benefits is so great that the term fringe benefits has become a misnomer.

294. The contribution of the collective bargaining process in these areas has more than afforded workers benefits and protections in areas where they might not otherwise have gained them. It has provided a degree of latitude for experimenting with social security arrangements not found in most other countries. Against the disadvantages of collective bargaining in filling the gaps in Canada's present social security system, it affords, as we saw above, flexibility to adapt to the varying needs and preferences of workers in different settings.

295. Conventionally, collective bargaining is considered exclusively in terms of union-management confrontation. Yet more bargaining often takes place within a union than between union and management. As noted in a later section, groups of employees must work out a multitude of trade-offs among themselves before and during negotiations. Through their union they must establish priorities while attempting to resolve their collective differences with management. The resolution of these internal trade-offs is as essential to the success of the industrial relations system as is the reconciliation of disputes between the parties.

INDUSTRIAL DEMOCRACY AND THE RULE OF LAW IN THE WORK PLACE

296. One of the most cherished hopes of those who originally championed the concept of collective bargaining was that it would introduce into the work place some of the basic features of the political democracy that was becoming the hallmark of most of the western world. Traditionally referred to as industrial democracy,[17] it can be described as the substitution of the rule of law for the rule of men in the work place.

297. A number of steps were required to bring about this transition. Unions had to be formed to provide an effective countervailing power against that of management. The parties then had to enter into negotiations to resolve their differences. As their relations became more established and formal, it became increasingly common to commit their agreements to writing. Another indispensable characteristic of the rule of law is an independent judicial system under which any party to an agreement who feels that he has been wronged may seek redress. In the Canadian industrial relations system this has taken the form of the grievance procedure, with eventual recourse to third party determination in the event of an impasse.

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[17] See Sidney and Beatrice Webb, *Industrial Democracy,* (London, Longmans Green, 1897).

298. Beyond the bare essentials of a meaningful form of industrial democracy lie possibilities for other kinds of joint undertakings. Mentioned later are alternatives ranging from mutual co-operation to codetermination in areas not normally subject to collective bargaining. Although such arrangements may not be indispensable to a regime of industrial democracy, they can add a new dimension to the concept.

299. Even where union inroads into areas of "management prerogatives" have been relatively limited, collective bargaining has accomplished much for workers, if only by forcing enterprises to reconsider decisions which might have been taken without regard to their possible adverse effects on employees. The consequent restraints which collective bargaining has placed on management have provided workers with a measure of dignity, self-respect and security that they would not otherwise have gained.

300. The basic contribution of industrial democracy has been to reduce the disparity between the rights of the individual as a worker and his rights as a citizen. The curbing or elimination of arbitrary authority in the hands of management has been one of the greatest contributions of unions and collective bargaining.

ALIENATION AND THE SUBORDINATION OF INDIVIDUALISM

301. Serious problems remain. Workers who have long resented their terms and conditions of employment and management's authority over them now seem to be reacting to an even more basic grievance. An increasing number of workers appear to perceive an issue in the nature of their jobs and perhaps in the very idea of work as it is now structured. Because of this there is a growing disenchantment with and alienation from the roles that individuals have traditionally played to earn their livelihoods.

302. Superficially the causes do not seem hard to find, but fundamentally the phenomenon may elude rational explanation. Conventional wisdom suggests that the stage for trouble was set when work became so routine and mechanical that men were turned into little more than appendages to machines. Contrary to many of management's traditional assumptions about individual attitudes toward work, the behavioural sciences are discovering that most people do not have to be treated as though they resent work, cannot use discretion, and will not accept responsibility. There is increasing evidence that, in general, people perform best and are most satisfied when they are given a task, are left to their own resources to complete it, and are judged and awarded according to the results.

303. Difficulty has arisen from obsolete organizational forms and from the technology to which those forms have had to adjust. The state of the industrial arts dictates to a considerable degree the nature of work forms, structures and processes. Yet advances in technology may often be applied in a variety of ways; the challenge seems to lie in the adaptation of new

technology not only to meet man's material needs more effectively but also to render his work more edifying. With greater decentralization and delegation of authority, more emphasis is required on human engineering,[18] or tailoring the machine to man, than on industrial engineering,[19] which insists that man comply with the needs of the machine.

304. Unions, like management, have failed in this new and more challenging area, although they have responded comparatively well to worker concerns about their terms and conditions of employment and their subordinate status in relation to their employers. To some extent this failure is due to the fact that unions and collective bargaining were not designed to handle problems growing out of the nature of work itself.

305. Unions do not seem to have recognized the magnitude of the problem. Organized labour has long talked about alienation from work, but its answer seems to have been to ensure workers more generous pay to compensate for their frustrating life on the job with a good life off the job. This has not and will not solve the problem, and over time will likely become an increasingly ineffectual and expensive palliative.

306. The collective bargaining process may be compounding the situation by subjecting workers to a new but equally frustrating type of subordination. While improving the worker's status *vis-à-vis* his employer, collective bargaining has trapped him in a collective set of rules and regulations which can contain him even more. Individualism can be sacrificed as easily in a bilateral system of industrial government as in a unilateral one. Workers may thus come to rebel not only against their employer and their work but also against the very agent and process which have been introduced to protect their interests.

UNION MEMBERSHIP RESTIVENESS[20]

307. The fact that worker dissatisfaction sometimes runs as deeply against the union and collective bargaining as against management is reflected in the rebellion of union members against their leaders. Signs of this rebelliousness have been unmistakable. They include increasing turnover among senior union leaders, especially at the international union level, a number of cases in which workers have refused to ratify collective agreements[21], a spate of wildcat strikes[22], and seemingly greater willingness on the part of workers to change their union allegiance, particularly in Quebec where there

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[18] A. R. E. Chapanis, *Man-Machine Engineering,* (Bellmont, Wadsworth Publishing, 1965).

[19] For the classical work on this subject see F. W. Taylor, *The Principles of Scientific Management,* (New York, Harper, 1911).

[20] See also John H. G. Crispo and H. W. Arthurs "Industrial Unrest in Canada: A Diagnosis of Recent Experience", *Relations industrielles/Industrial Relations,* Vol. 23 (1968) No. 2. This section draws heavily on the analysis contained in this article.

[21] William E. Simkin, "Refusals to Ratify Contracts", *Industrial and Labor Relations Review,* July 1968, pp. 518-540; and Fernand Morin, *Procédure de décision utilisée par le syndicat pour accepter l'offre patronale ou faire grève,* Task Force Study.

[22] See Maxwell Flood, *Wildcat Strike in Lake City,* Task Force Study.

is greater union competition.[23] One can find varying manifestations of each of these phenomena in past generations, but never in the same intense combination as in recent years.

308. Explanations can be sought at several levels. Fundamentally, union membership restiveness may be nothing more than another characteristic of troubled times. There is an undeniable tendency in this generation to question and challenge both authority itself and those in a position to exercise it. Beyond this distinctive feature of the age, however, is a host of more specific factors which together may be more significant because they can reinforce each other with potentially explosive consequences. It is difficult to document and assess these causes of rank and file militancy as their significance varies from case to case. But it is important to identify as many of these factors as possible in order to record the complexity of the situation.

309. In a society of rising expectations[24] it is natural that people should want more of the good things of life. The intensity of their demand may be attributed in no small measure to the influence of advertising and the standard of living it portrays. Workers are no less susceptible to the acquisitive drive than others and it should be no surprise that they expect their unions to win them "middle-class" purchasing power. The demand for more has intensified during recent periods of prosperity because inflation threatens to wipe out any real increase in income unless the gains more than cover the rising cost of living. Further aggravating the situation from time to time are increases which other groups win. When these gains seem larger than usual, the temptation is for others to try to emulate them. This is especially likely where the increases come during the course of government intervention in labour disputes, as in some of the critical settlements of 1966 and 1967. Unless there is ample justification for such apparently out-of-line settlements, and unless that justification can be widely appreciated, untoward pressures in other quarters for similar gains can be expected.

310. Fear of displacement or adjustment due to technological and other change can also be an upsetting factor, as can management secretiveness about anticipated changes.[25] Fear breeds suspicion and suspicion, in turn, makes workers susceptible to rumours, all of which can have an adverse effect on the industrial relations climate. In such circumstances a rigid collective agreement, which makes no effective allowance for the needs of workers faced with displacement or other serious adjustment, can itself create problems if the workers affected become impatient with the legal formalities of the situation.[26]

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[23] Gérard Dion, "La concurrence syndicale dans le Québec", *Relations industrielles/Industrial Relations*, Vol. 22 (1967) No. 1, pp. 74-84.

[24] See William Westley, *Work and Industrial Relations in a Mass Consumption Society: Canada*, Task Force Study; and Bernard Solasse, *Syndicalisme, consommation et société de consommation*, Task Force Study.

[25] See Jan J. Loubser, *The Impact of Industrial Conversion and Worker's Attitudes to Change*, Task Force Study.

[26] Mr. Justice Samuel Freedman, *Report of the Industrial Inquiry Commission on Canadian National Railways "Run-Throughs"*, (Ottawa, Queen's Printer, 1965).

311. Likewise, difficulties can arise from the tendency on the part of union and management to exploit the advantages of more centralized arrangements for bargaining and contract administration. Such a shift in the locus of decision making often makes it more difficult to keep sufficiently in touch with local or departmental problems and grievances.[27] If these accumulate, the situation can become explosive.

312. The same result may follow from an attempt by union and management to take advantage of long term agreements. So many unforeseen issues may arise and so many other settlements may occur during their term that it may become difficult to satisfy workers' pent-up demands during the next round of negotiations.

313. Inexperience in bargaining can also have a deleterious effect. Newly organized groups of workers may have unrealistic expectations about the power of concerted action to solve their problems, producing an unhappy combination of naïveté and strike-proneness. Equally upsetting can be the impact of lack of expertise on management's side of the bargaining table. A related point is the influence of the growing numbers of young people in the labour force.[28] In contrast to earlier generations, these young people have lived in a period of sustained prosperity, are better educated, are more impatient for the good things of life, are unintimidated by the experience of the depression, and are generally more skeptical of the values of their elders and of the need to respect authority. Unschooled in the traditions of trade unionism and collective bargaining, unappreciative, perhaps unaware, of past accomplishments, and eager to share in their purported benefits, they are bound to have an unsettling impact.

314. A number of factors largely internal to the labour movement further complicate the situation. In the absence of effective communications within a union[29], a large gap in understanding can occur between the leaders and the membership, and a crisis of confidence can develop. This problem is aggravated by the increasing difficulty unions are having in reconciling competing interests of their members, of which the conflict of generations between pension improvements and immediate wage gains is only one illustration. Moreover, in cases of intra-union factionalism and inter-union rivalry, all strive to convince the members that they can do a better job. Finally, young militants aspire to take the place of established union leadership. All these features can hardly avoid leading to outbreaks of unrest. Mentioned earlier were frustrations resulting from work that has no intrinsic meaning. There is a limit to such frustation beyond which men will not go without seeking relief through acceptable or unacceptable channels.

315. Common to several of the above factors is the influence of rising educational levels which undoubtedly help to whet the appetites of workers

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[27] William E. Simkin, *op. cit.*

[28] Frank T. Denton, Yoshiko Kasahara and Sylvia Ostry, *Population and Labour Force Projections to 1970,* Economic Council of Canada, Staff Study No. 7, (Ottawa, Queen's Printer, 1964).

[29] Maxwell Flood, *op. cit.*

for more material goods and for greater job satisfaction. Rising levels of education may also make workers more aware of their potential power to demand a larger share of the good things of life.[30] During periods of full employment, a tight labour market greatly enhances union bargaining power. When jobs are so plentiful that striking workers can readily secure employment elsewhere, the cost of striking is minimal to the worker. This is the position of many workers in certain trades and occupations over the past few years. They have had much to gain and little to risk by applying economic pressure.

316. Militant behaviour has paid off frequently in recent years,[31] even where union membership militancy has taken illegal forms. It is one thing to extract further concessions by refusing to ratify a collective agreement; it is another to serve that purpose by striking unlawfully. In either event, however, the danger for collective bargaining is the same. Once having tasted the fruits of their militancy, union members may find it irresistible to display that militancy again.

317. When employers make further concessions in the face of rank and file militancy, they doubtless weigh the short run cost of standing firm against the long run cost of backing down. The short run burden must be grave to offset the long run risk, for failure of management to stand up to such pressure not only invites repetition; it tends to undermine management credibility and the position of incumbent union leadership.

318. Union officials have at times been described as essentially "managers of discontent". Never has this assertion stood out more forcefully than in recent years. This makes it more difficult to reconcile employee rights and union responsibilities, a subject to which we now turn.

EMPLOYEE RIGHTS AND UNION RESPONSIBILITIES[32]

319. A strong case can be made for assisting unions and their leaders to contend with membership pressures without jeopardizing their own positions, the collective bargaining process, or the welfare of society at large. But an equally strong case can be made for ensuring that labour organizations do not violate the basic democratic rights of their members either as a group or as individuals. These competing interests call for a delicate balancing of membership rights and union responsibilities.

320. The power that unions can exercise over present and prospective members suggests that union membership rights are a subject of legitimate concern. Labour organizations have acquired a number of important quasi-public powers since the days when they were no more than voluntary

[30] William Westley, *op. cit.* and Bernard Solasse, *op. cit.*
[31] William E. Simkin, *op. cit.*
[32] See E. E. Palmer, *Responsible Decision Making in Democratic Trade Unions,* Task Force Study.

associations. The state has endowed them with one especially important prerogative and permitted them to exercise two others. First, unions are granted exclusive bargaining rights in units appropriate for collective bargaining. The rules incorporating this policy vary from jurisdiction to jurisdiction, but the effect is essentially the same. Much of the right of negotiation, particularly over terms as distinct from the fact of employment, is transferred from the individual to the collectivity. Second, having been recognized as sole bargaining agents, unions are free to negotiate any kind of union security clause they are able to extract from management. Such arrangements range from an "open union shop", where no obligation is placed on the individual employee, to the "closed shop", where a man cannot work unless he is already a member of the union. In between lie the more common "union shop", where a worker must join the union after a specified waiting period, the "agency shop", under which there is a universal obligation to pay union dues but not to join the union, and other variations.[33] Third, many unions have acquired virtually complete control over entrance standards and a great deal of control over the rights of their members to continuing membership.

321. Given the potential power that unions can exercise over present and prospective members, one would expect that steps would have been taken to prevent abuse, limited though it may be. In fact, little has been done except for the occasional *ad hoc* measure introduced in the face of glaring abuses. Such was the situation when a government trusteeship was imposed over several maritime unions, at least in part because of the arbitrary and capricious use by the Seafarers' International Union of Canada of its infamous do-not-ship list.[34] Even in this case it is not clear that any action would have been taken had there not been other equally disturbing elements. The danger is that abuses in other unions, though apparently few and infrequent, may go unchecked in the absence of basic rights and remedies guaranteed by law.

322. A member or prospective member of a union may appeal to the courts if he feels his legal rights have been abridged. But these rights are not always clear; they can be minimal, legal costs can be great, and a decision can be long in coming. Thus, resort to the courts scarcely provides a complete answer, although it has had a salutary effect in several cases.[35] On more limited grounds, an employee may seek recourse from a labour relations board if he feels his rights under a labour relations act have been violated. Similarly, a human rights code can provide partial protection. A few unions, notably the United Automobile Workers[36], have created independent

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[33] Canada Department of Labour, Economics and Research Branch, *Collective Agreement Provisions in Major Manufacturing Establishments,* Labour-Management Research Series No. 5 (Ottawa, Queen's Printer, 1964).

[34] The Honourable T. G. Norris, *Report of Industrial Inquiry Commission on the Disruption of Shipping,* (Ottawa, Queen's Printer, 1963).

[35] E. E. Palmer, *op. cit.*

[36] J. Stieber, W. E. Oberer, and M. Harrington, *Democracy and Public Review:* An *Analysis of the UAW Public Review Board,* (Santa Barbara, Center for the Study of Democratic Institutions, 1960).

appeal tribunals for their members. Such tribunals have much merit, but their contribution is limited because they operate within the union's constitutional framework, something which the tribunals may or may not be able to influence if they deem the framework unfair or unjust.

323. Several basic rights deserve attention. First is the fundamental question of access to union membership, particularly where membership is a prerequisite to employment. As we discuss more fully elsewhere, there are inherent dangers in allowing any collective entity in the labour market to close or arbitrarily limit its ranks without some degree of public scrutiny and control. The public interest in this area goes beyond the protection of individual rights that may be affronted, to concern over the wider ramifications of permitting any organized group to control access to a particular segment of the labour market.

324. Related to the right of access is that of equitable treatment in the distribution of available work where a closed shop is operated in conjunction with a hiring hall. Moreover, if some minimum standard of competence is required, it would seem essential to ensure that the means of acquiring and estabishing that competence are available on a basis equal to all.

325. Equally important is the protection of a worker's civil rights as a union member. Unions cannot bring industrial democracy to the work place if they themselves operate in an autocratic fashion.[37] This does not mean that unions should be expected to exhibit all the trappings of a political democracy, including, for example, a multi-party system, but it does suggest that the basic attributes which are axiomatic to meaningful participation and protection in any organization must be present. Thus, the elementary right to express one's opinions and to seek office without fear of reprisal must be preserved. Above all, the individual member must be assured a fair trial and an appeal to a tribunal free from predisposition should he be brought under charge. Without this basic protection, all other rights are in jeopardy.

326. In the United States, many of these rights have been incorporated into a "bill of rights" for union members.[38] This legislation followed the McClellan Committee disclosures[39] of a variety of corrupt and undemocratic practices in certain unions. The legislation not only includes a bill of rights guaranteeing equal rights within unions, freedom of speech and assembly, electoral safeguards, protection against improper disciplinary action, and other basic democratic principles; it also provides for the regulation of trusteeships, full financial accounting by unions to their members, the bonding of certain union officers, other fiduciary responsibilities, and a wide variety of reports.

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[37] Gérard Dion, "La démocratie syndicale" Gérard Dion (ed.), *Le syndicalisme canadien: une réévaluation,* (Québec, Les Presses de l'Université Laval, 1968), pp. 77-99.

[38] Title 1 of the Labor-Management Reporting and Disclosure Act, Public Law 257, 86th Congress, (73 Stat. 519-546).

[39] U.S. Congress, Senate Select Committee on Improper Activities in the Labor or Management Field, (Washington, U.S. Government Printing Office, 1960).

327. Although circumstances in Canada call for some reform in these areas, nothing as comprehensive as the United States enactment seems either necessary or desirable. Relatively few procedural and substantive safeguards appear to be in order. As quasi-public bodies, unions can hardly object to such safeguards, first bcause they are not merely private associations, and second because, few though the abuses may have been in this country, they are nonetheless important. Moreover, if state intervention in this area is limited to certain bare essentials, there are, according to union spokesmen, very few unions that should ever run afoul of the law.[40] Where necessary, international unions have already brought their constitutions and practices into line with the provisions of the *Landrum-Griffin Act* in the United States, and nothing enacted in Canada need be any more demanding.

328. There are more specific problem areas such as the use of union funds for political purposes, especially when they are raised through the compulsory check-off of dues. No difficulty arises as long as these funds are employed solely for legislative lobbying. But when they are used to back a political party, there are grounds for concern. Members whose political persuasions are different from those of their union may object to the expenditure of any of their dues on a party with which they do not sympathize. Yet unions should have the same right as other organizations to support the party of their choice, as long as that choice has the support of a majority of their members. A way must be found to reconcile these competing interests without doing an injustice to any of them. Whatever is done should not put labour organizations at a disadvantage relative to other interest groups.

329. Another troublesome issue concerns the relative rights of the collectivity and of individuals in the negotiation and administration of a collective agreement. The problem can best be illustrated in relation to the individual member's right of access to the grievance procedure and to arbitration. Normally such access is controlled by the union, and this is as it must be if collective bargaining is not to be undermined. Yet the union should be expected to exercise this discretionary power in a fair and impartial manner if it is not to have arbitrary control over its members. This suggests that a union should be able to show that it acts in good faith whenever it chooses not to pursue a member's grievance or to pursue another one contrary to his interest. This must be the limit to any concept of fair representation if responsible collective decision making within and between union and management is not to be jeopardized.

330. Whatever is done to protect union membership rights must be accomplished without undermining the basic fabric of the labour movement or its ability to play a responsible role in society. With respect to the former,

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[40] Canadian Labour Congress, *Report of the Commission on Constitution and Structure as approved by the Executive Council of the Canadian Labour Congress,* (Toronto, May 1968), p. 10, para. 46.

a union is like a country perpetually in conflict with a neighbour without which it cannot get along. As a militant organization, a union cannot afford the ultimate in democracy. Nor would this be desirable from the viewpoint of society at large, since it might preclude a union from taking unpopular but responsible positions in the face of membership restiveness. Accordingly, the challenge is to fashion a code of civil rights for union members, and machinery for administering it, that neither so weakens unions as to render them ineffective in bargaining nor so exposes them to membership pressures that they cannot act responsibly when circumstances dictate.

THE LABOUR MOVEMENT— STRUCTURES AND APPROACHES

331. One of the advantages of a pluralistic society is the multiplicity of organizations competing to serve different interests. In this sense, the labour movement has often mirrored the wider society. It is made up of myriad individual units which frequently differ in structure or philosophy or both. Structurally, as was brought out earlier, unions range from catch-all organizations, such as District 50, formerly part of the United Mine Workers of America and now independent, through industrial unions, such as the United Steelworkers of America, and mixed industrial-craft unions, such as the International Brotherhood of Electrical Workers, to basically craft organizations, such as the Sheet Metal Workers' International Association. Philosophically, the spread covers everything from a small number of unions purportedly dedicated to the radical transformation of society to a large number of craft unions interested in the preservation of the existing system. Between lies the bulk of the labour movement, with a membership primarily interested in bread and butter gains, and a leadership determined to provide those gains while working toward the gradual reform of society.

332. Of paramount interest are rivalries which arise from different structural forms that unions may assume.[41] The resulting competition has healthy and unhealthy manifestations. In the first category is inter-union rivalry for the allegiance of workers in collective bargaining. Although representation disputes can be disruptive—witness some of the results during the past few years in Quebec—they cannot be eliminated if unions are to maintain their vitality and responsiveness to their members' interests. Although sound democratic practices within unions can, in large measure, serve as a substitute for competition between them, there are advantages in some representational rivalry in order to avoid the potentially corrosive effects of a monopoly situation. As elsewhere in the Canadian socio-economic-political system, the problem is to preserve competition while keeping it from degenerating into

[41] See Paul Bélanger, *La rivalité intersyndicale au Québec,* Task Force Study.

destructive form. In this connection we commend the efforts by the Canadian Labour Congress and the Quebec Federation of Labour on the one hand, and the Confederation of National Trade Unions on the other, to work out acceptable rules for workers who wish to change unions.[42]

333. A second major type of inter-union dispute occurs over work assignments and has few, if any, positive attributes. Such conflicts have been largely confined to disputes between craft unions with overlapping jurisdictional claims, particularly in the building and printing trades. Recently they have appeared among skilled workers in major industrial unions. At issue in these cases is which union or group or trade is to have jurisdiction over a particular type of work. Aggravated by changes in technology which tend to blur existing job demarcation lines, such disputes are often intense because of what is at stake for both unions and workers. Employers and the public often suffer from such work assignment conflicts.

334. A different type of jurisdictional dispute arises on construction projects between on-the-job contractors, unions and workers and off-the-job fabricators, unions and employees.[43] At issue is the right of the latter, especially when they are members of industrial unions, to install prefabricated units on construction sites. The building trades unions and their members, sometimes with the support of their contractors, have a natural desire to retain as much on-site work as possible, even to the point of insisting on prefabricated units being dismantled and reassembled on the job. At least they are usually determined to keep non-building trade workers off the sites. Where this conflict leads to work stoppages or uneconomic and costly alternative methods, the chief losers are the owner-builders and clients and ultimately the public.

335. Since many of these problems result from deficiencies in the structure of the labour movement, unions could do much to forestall further government intervention in these areas. Structural reforms in the labour movement would serve many other purposes as well. The number of unions now in existence could be reduced in order to permit a smaller number of consolidated unions to hire more qualified staffs to assist in bargaining. Mergers or increased co-operation among unions would also better equip them to negotiate more rational job progression and protection systems in those industries where seniority units have become unduly fragmented because of union multiplicity. In these and other ways realignment in the labour movement would doubtless enhance the bargaining power of its constituents.

336. It is for this reason that the labour movement has been undergoing self-examination in recent years. As a result of one such internal appraisal[44],

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[42] *Relations industrielles/Industrial Relations,* Vol. 23 (1968) No. 2, pp. 361-368.

[43] Gérard Dion, "Jurisdictional Disputes", H. Carl Goldenberg and John H. G. Crispo (eds.), *Construction Labour Relations,* (Ottawa, Canadian Construction Association, 1968), pp. 333-375.

[44] Canadian Labour Congress, *op. cit.*

the Canadian Labour Congress has taken a number of steps to improve its effectiveness and to induce its affiliates to realign themselves on a basis more in keeping with the present needs. There are many obstacles, in particular the opposition of those who have an interest in the *status quo*. Of special significance is the position of international unions. With rare exceptions, they are unlikely to support such realignments unless they are applicable to the United States.

337. The international union link raises a number of other issues both at the central federation level and among individual international unions.[45] At the federation level, the Canadian Labour Congress has steadily developed into the autonomous national labour centre it proclaimed to be at its inception. There remains only one important area where the United States labour federation, the AFL-CIO, continues to exercise formal jurisdiction in Canada. Both the Maritime Trades Department and the Building and Construction Trades Department of the AFL-CIO continue to charter port and building and construction trades councils in this country, through which they periodically attempt to exercise influence. These councils do not have to affiliate with the Canadian Labour Congress nor with the provincial federations of labour, and occasionally serve to represent the contrary interests not only of their individual affiliates but also of their parent departments in disputes with the Canadian Labour Congress. This remaining vestige of a bygone era is not compatible with the status to which the Congress has quite properly aspired *vis-à-vis* its United States counterpart.

338. For most individual international unions four important criteria can be stated as guidelines to judge whether full opportunity is being accorded the Canadian membership to handle its own problems. First, there must be a central Canadian office authorized to speak for the union in this country. Second, the Canadian membership must elect the top Canadian officers either directly by a referendum vote or indirectly by representative convention or caucus vote. Third, there must be a Canadian policy conference empowered to deal effectively with the union's affairs in this country. Fourth, a competent staff must be available to serve the special needs of Canadian members.

339. A structural problem is posed in the case of unions that cannot meet these criteria because the size of their Canadian membership makes it uneconomical to do so. The sensible answer would be to merge two or more such groups or to have them absorbed by larger organizations. Short of these possibilities, councils of unions sharing overlapping jurisdictions could be formed to pool their resources. The Canadian Labour Congress has already established such a body in the broadcasting field, which has yet to perform much more than a loose-knit co-ordinating role. The scope for change in this and other areas remains great indeed.

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[45] For further reference see John H. G. Crispo, *International Unionism: A Study in Canadian-American Relations,* (Toronto, McGraw-Hill, 1967).

340. Before leaving this subject, it should be emphasized that the trend toward Canadian autonomy favours those international unions that have already met some or all of the four criteria suggested. Moreover, while many, if not most, unions have much to achieve, it is among the largest that most progress has been made. Numerically, therefore, most international union members in Canada belong to unions that have made or are making substantial headway.

341. The Canadian Labour Congress could spur the remaining unions through the "code of efficiency" it has to prepare as a result of one of the recommendations of its Commission on Constitution and Structure which was adopted at its last convention.[46] This could serve as a springboard for the emergence of a code of operating principles for affiiliated international unions in this country.

342. A review of the philosophy or approach of the labour movement in Canada prompts two observations.[47] The first relates to the split personality of the movement. In the community, spokesmen for organized labour perceive it as a kind of social conscience; unions take positions on current issues and regularly speak out against social injustice. When the labour movement goes beyond specific pronouncements in these areas and calls for national social and economic planning, including a comprehensive incomes policy, it risks creating a serious credibility gap. The labour movement, like other institutions in society, is hardly prepared to participate in such a system. Indeed, while the labour movement may not have embraced all the tenets of private enterprise, it has adopted one outstanding characteristic that renders it more compatible with this order than with any other. Preoccupied as individual unions are with serving their members' immediate goals through collective bargaining, it is virtually every union for itself on the labour side, just as it is every enterprise for itself on the corporate side. Until the labour movement can show a willingness among its disparate parts to transfer sufficient autonomy to the centre to enable it to play a meaningful role in a national planning scheme, it will remain vulnerable to a charge of inconsistency for not being prepared to practise what it advocates.

343. Second, mention should be made of the part that many unions have played in helping to meet Canada's bilingual and bicultural challenge. Most large national and international unions have provided equivalent service to their members whether they are English-speaking or French-speaking Canadians. Smaller unions have been less able to provide this service because of limited resources.

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[46] "That the Congress initiate a study to determine the appropriate standards of efficiency and services that a union should provide for its members with a view to the preparation of a Code of Efficiency." Canadian Labour Congress, *Report of the Commission on Constitution and Structure as approved by the Executive Council of the Canadian Labour Congress,* 7th Constitutional Convention, (Toronto, May 1968), p. 12.

[47] See C. Brian Williams, *The Evolution of the Philosophy of Canadian National Trade Union Centers, 1935-1967,* Task Force Study; and Louis-Marie Tremblay, *Évolution de la philisophie du syndicalisme au Québec,* Task Force Study.

MANAGEMENT AND INDUSTRIAL RELATIONS[48]

344. The individual employer's reaction to the emergence of a union among his employees is critical in setting the tone of the ensuing labour-management relationship. Because the union is the one dispensable element in the situation, its leaders tend to be insecure and take any sign of management hostility or resistance as a frontal attack on the union. Because management regards the union as an unwanted interloper, it is only natural for the union to react this way. Knowing this, a well intentioned management can at least open the door to sound relationship by the posture it adopts. Out of ignorance or by deliberate design management can easily bar that possibility.

345. Employers should be aware of the advantages as well as the disadvantages of unionization. Unions have been found by many employers to be of great administrative assistance, especially in large undertakings. They provide an effective consensus-making apparatus that makes rules and regulations more palatable. In the absence of collective bargaining, employers must impose their version of a satisfactory internal alignment of wages, fringe benefits and working conditions, and nothing imposed is as mutually satisfying or effectively implemented as a jointly determined decision.

346. A union may not always be viewed as a net advantage. In many small operations where a degree of flexibility not always acceptable to unions may be essential to survival, unions frequently are regarded with skepticism. Regardless of its source, this skepticism helps explain the resistance that many firms show at any sign of organization. Opposition is sometimes so acute that it leads to tactics that violate public policy favouring collective bargaining.

347. This policy, for the most part, is premised on the view that the employer should stand on his record as an employer when confronted by a union organizing campaign. Consequently, management is not permitted to promise or threaten anything during such a period and is limited to a defense of its employment standards and to a rebuttal of union accusations and declarations. These boundaries are hard to delineate and police; as a result, employers may attempt, sometimes successfully, to apply more pressure than the law intends. The effect could be twofold. If employers are successful in the pursuit of such tactics, further legislative restraint on their activities may be introduced. Should they fail in their purpose, they are likely to be confronted by a union whose attitudes and strategies will reflect the hostility which the employer has shown.

348. Where a firm does not actively oppose the organization of its employees, management is often ill-prepared to conduct a positive industrial

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[48] See also J. J. Wettlaufer, G. Forsyth, and A. Mikalachki, *Management's Views of Union-Management Relations at the Local Level,* Task Force Study; and Laurent Bélanger, *Évolution du patronat et ses répercussions sur les attitudes et pratiques patronales dans la province de Québec,* Task Force Study.

relations program. Although informal handling of employer-employee relations may suffice in the absence of unions, it is not sensible in their presence. Yet there are firms and industries, such as in sectors of the construction industry and some parts of the maritime field, that seriously neglect the industrial relations function. The turbulence of labour relations in these firms and industries may be traced to the lack of sufficient expertise and concern by employers. It is not surprising that complaints from management in these industries about legislative inadequacies often go unheeded. Until employers put their own industrial relations in order, an improved statutory framework will not solve their problems.

349. In other cases the difficulty is not so much the quality or quantity of the industrial relations personnel as their position and influence within the managerial hierarchy. A glance at the organization charts of many enterprises shows how little importance is attached to the industrial relations function. Perhaps even more critical is the tendency to so compartmentalize the function that everyone else in management abdicates responsibility for union-management relations.

350. Associations of firms have played a useful role in collective bargaining in a number of industries. They are especially necessary where a large group of relatively small firms are confronted by a well organized union or group of unions. In some situations there is greater need for countervailing power on the employer side than on the employee side. Yet these are precisely the cases where employer or contractor associations are least likely to hold together in a crisis. Intense competition and turnover among firms may put a short run premium on continued operations by individual firms, even in the face of a collective consensus that it would be better to take a strike. The result can be harmful for the alliance of employers, the public and possibly the workers themselves.

351. Effective employer organization at an even broader level would also be helpful. Throughout our inquiry we have been struck by the difficulty of securing a management consensus on matters pertaining to industrial relations. At both the federal and the provincial levels there are so many employer associations to be consulted on policy matters that government officials could exhaust much time and effort trying to keep up with their views. It would be extremely useful if management could form a federation of such associations to speak with a united voice wherever possible on industrial relations matters.[49]

352. Management will always remain highly pragmatic, but that does not mean that short run expediency should always govern. Yet this often seems to be the case in industrial relations. Unless employers pay more attention to the long run implications of their decisions, they will be responsible if those implications materialize to their detriment. An example is the reaction of some firms to the refusal by union members to ratify the terms of

[49] At the provincial level, in Quebec, a *Conseil du Patronat* has recently been established.

collective agreements negotiated by their leaders. Employers have sometimes seemed too willing to improve the offer, particularly when the alternative is a costly shutdown. Managements who once react in this way should not be surprised if they are expected to do so again.

353. Management shortsightedness can also have lasting effects. This is best illustrated by the problem of restrictive work practices. Often these are the product of a management which, in a period of prosperity, is willing to concede much to avoid the unusually high cost of a shutdown. Sometimes it may be a case of weak management. On other occasions the advice of the industrial relations staff may be rejected in favour of that of financing, production and marketing personnel. In any event, the result can be such an accumulation of entrenched make-work rules that a collision between a firm's survival and the vested interests of a union and its members becomes unavoidable.

354. The history of industrial relations in this country reveals that the posture of management is a critical determining factor in the nature of the union-management relationship. Employers can, as in the United States, choose from a range of strategies in charting their industrial relations course.[50] At one end of the spectrum is active hostility to unions which can at best lead only to strained relations. Further along the spectrum is the possibility of deliberately trying to compete with unions for the loyalty of employees, almost to the point of failing to recognize the prevalence of dual loyalties in this area. Here again the result is likely to be continuous conflict. Still another alternative is that which characterizes most large corporations today. They usually accept unions as part of the system and visualize collective bargaining as a straight power struggle. Although periodic conflict is to be expected in this kind of relationship, neither side need try to undermine or destroy the other and a respect for one another can develop. Occasionally this kind of an environment produces more co-operative relations between labour and management. Such co-operation does not rule out conflict, but it paves the way to mutual efforts in areas of common concern.

355. Management thinking about industrial relations has changed greatly since unions first emerged; when resistance was fairly general. Today employers are more prone to engage in defensive endurance or peaceful competition. The result is a lessened tendency to approach union-management relations emotionally, with a correspondingly greater inclination to approach these relations as only one of a series of complex interrelationships which management must seek to co-ordinate. Even such issues as management prerogatives are seen in a more objective light as one more facet of the continuing power struggle between the parties.

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[50] Frederick H. Harbison and John R. Coleman, *Goals and Strategies in Collective Bargaining*, (New York, Harper and Bros., 1951); Robert N. McMurry, "War and Peace in Labor Relations", *Harvard Business Review*, Vol. 33 (1955) No. 6; and Benjamin M. Selekman, "Varieties of Labor Relations", *Harvard Business Review*, Vol. 27 (1949) No. 2.

356. Employers can select policies which are either compatible or incompatible with a workable union-management relationship. In the one case, they can expect trouble. In the other, there is no guarantee of harmonious relations, but that at least remains a fair possibility.

COLLECTIVE BARGAINING AND ECONOMIC EFFICIENCY

357. We have already suggested at several points that collective bargaining is not a process designed primarily to yield economic efficiency. In practice it has mixed effects, the net impact of which is debatable.

358. There are ways in which collective bargaining contributes to improved productivity. Union-won wage increases provide added impetus to management's search for more efficient means of production. In addition it can be argued that, by giving workers a voice in their terms and conditions of employment, collective bargaining reduces their frustrations and makes them more satisfied, and therefore more productive employees.

359. Against these effects must be set certain of its potentially adverse consequences. For example, as we record in the next section, unions and collective bargaining tend to contribute to the division of the labour market into non-competing groups, thereby reducing its efficiency as an allocator of labour. Furthermore, make-work rules are still present in many trades and occupations and clearly detract from the overall productivity of the economy.

360. Still more basic to an assessment of the limits of collective bargaining is its relationship to the general economic performance of the economy. In Part Three we examined the economic goals set for the country through and by the Economic Council of Canada. Collective bargaining is not meant to attain any of those goals either individually or in concert. Indeed, it can be a complicating factor of significance.

361. We do not mean to imply that any other general system of employee-employer relations would yield greater efficiency. In our view, that is highly questionable, and for this reason we would be most dubious about looking to any alternative system on this basis alone.[51] Nonetheless, it is well to be aware of this limitation in the existing system.

362. Collective bargaining is meant to serve the economic and related interests of those who choose to make use of it, and not necessarily those of society as a whole. Although these two sets of interests may at times coincide, they may also conflict. Unrealistic expectations about the relationship between collective bargaining and the attainment of society's economic objectives should be avoided.

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[51] For further reference see John T. Dunlop, "The Social Utility of Collective Bargaining", Lloyd Ulman (ed.), *Challenges to Collective Bargaining*, (Englewood Cliffs, N.J., American Assembly—Prentice Hall, 1967.

COLLECTIVE BARGAINING AND THE LABOUR MARKET

363. This section is concerned with the effects of trade unionism and collective bargaining on a particular manifestation of economic efficiency: the operation of the labour market. As we note in Part Two, the labour market is but one of an interrelated strata of markets that are the basis of a mixed enterprise economic system. The principal function of the labour market is to arrive at a price for labour which brings supply and demand into balance and thereby clears the market. The labour market has a dual role, both as an allocative device and as a method for determining the wage rates that are an essential aspect of the allocative function.

364. In performing its dual role, the labour market depends upon an appropriate interaction between changes in wage differentials and shifts in the labour force. The underlying assumptions are that wages are basically determined by market forces and that there is sufficient labour mobility to ensure an adequate response to market-induced wage changes. An earlier part of this Report deals with the impact of collective bargaining on the wage structure; this is dealt with here only by implication. Most of this section is devoted to the effect of collective bargaining on labour mobility.

365. Although in broad outline the labour market functions as it is intended to, it has many of the imperfections that show up in any market: "In the labour market in particular, reality deviates in numerous ways from the texbook picture of competition."[52] There is no single labour market apportioning homogeneous quantities of labour, but a series of interrelated sub-markets. Nor is there perfect knowledge in any of these sub-markets, nor in the overall market: "There is simply no place in any local labour market, let alone on a national or regional basis, where individual job seekers or employers can discover the full range of possible jobs or employees available."[53]

366. Because of these and other imperfections in the labour market, an appraisal of the impact of collective bargaining must compare the current market not with a perfectly competitive market but with the market that would exist in the absence of collective bargaining. Imperfections exist in the labour market with or without collective bargaining. The pertinent question is whether these imperfections would be greater or smaller in the absence of collective bargaining.

367. Professional opinion exhibits great diversity. Not only do economists disagree on whether collective bargaining has any effect on the labour market, but those who assert that there is an effect disagree on whether it is

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[52] A. M. Kruger and N. M. Meltz, *The Canadian Labour Market,* (Toronto, University of Toronto, Centre for Industrial Relations, 1968) pp. 15-16.

[53] U.S. National Commission on Technology, Automation and Economic Progress, *Technology and the American Economy,* (Washington, U.S. Government Printing Office, 1966), p. 50.

on balance good or bad. The only reasonable conclusion appears to be that there is some effect and that it is sometimes good and sometimes bad. On the positive side, the operation of hiring halls can be seen as an example of collective bargaining leading to a more rational method of allocating labour. In some trades and occupations, employment conditions have long been so tenuous that the introduction of the hiring hall has undoubtedly contributed to the efficiency of that market through provision of an effective clearing-house. Although the power that has been obtained through control of the hiring hall has at times been abused,[54] this in no way detracts from the potential labour market contribution of that institution.

368. Collective bargaining may also serve to improve the operation of the labour market within the scope of a particular enterprise. Unions are often able to negotiate plant or company-wide job posting systems that can have the effect of leading to a more efficient internal allocation of labour.

369. There are limitations, however, even with respect to these positive effects, since they apply only within the jurisdiction of the applicable union:

> ... Inside the market, wages, working conditions and job requirements are equalized, and the worker has an unusual knowledge of conditions and job opportunities. Sometimes worker performance is standardized also, so that no employer need prefer any worker any more than any worker need prefer any employer. Though the men within the market are equal with each other, they are unequal with others outside the market. A little egalitarian island has been created in the midst of a sea of inequality.[55]

370. Collective bargaining may do nothing to improve the unorganized labour market. Moreover, according to some writers,[56] it may contribute to an increasingly structured labour market demanding more formalized and homogeneous job requirements which tend to militate against less fortunate groups that lie outside its sphere of influence.

371. Like other organizations and pressure groups, unions are concerned with maximizing the benefits accruing to their members. One method of doing this is to retard or restrict the normal forces of the labour market for their own advantage. Restricting the conditions of entry to a specific craft, for instance, is a way of increasing the economic benefits of that craft. The existence of unions, however, is not the only reason why labour markets exhibit fairly rigid structures. There are many less formal forces at work: members of a particular occupation may pursue collective interests without a union; and informal promotion rules exist in the absence of formal seniority systems. Nor are unions the only organized groups that can restrict entry for their own gains. The actions of associations of professionals are analagous.

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[54] For an extreme case of such abuse we suggest reference to The Honourable T. G. Norris, *Report of Industrial Inquiry Commission on the Disruption of Shipping, op. cit.*

[55] Clark Kerr, "The Balkanization of Labor Markets" in Bakke, Kerr and Anrod, *Unions, Management and the Public,* (New York, Harcourt, Brace and World, 1967), p. 552.

[56] Walter Fogel, "Labor Market Obstacles to Minority Job Gains", *Industrial Relations Research Association Proceedings,* 1967, pp. 97-104.

372. In varying degrees, collective bargaining strengthens already existing tendencies and fosters the proliferation of institutional rules which lead to sharper demarcation among labour markets and make these specific boundaries is more difficult to cross. It might be concluded that the net effect is harmful, and must detract from the allocative function of the labour market and thereby reduce economic efficiency. Yet some who admit that unions restrict inter-plant mobility claim that this is beneficial because excessive mobility is disruptive of the productive capacity of the work force. The relevant question is whether the process of collective bargaining has a tendency to move the market closer to or farther away from the optimum degree of mobility. This question cannot be answered *a priori,* but it appears again that we have to accept that both are quite possible.

373. There is one sense in which unions clearly contribute to undue rigidity in the labour market. In a later section we refer to the narrow and confining seniority systems that unions sometimes press for and obtain. In effect, these become restrictive occupational ladders which tend to bind insiders and bar outsiders. Both within and between organizations, the result can be the creation of a host of separate labour markets which interfere with the efficient operation of the overall market.

374. Other results of collective bargaining also merit attention, since some observers suggest that there is a tendency for other contract provisions to reduce labour mobility.[57] The best examples are unvested and unfunded fringe benefits of any kind—particularly in the field of pensions—which are said to have a tendency to tie workers to a given employer. Again, however, there is professional disagreement on this issue, with at least one prominent researcher suggesting that there has been no observable decrease in mobility as a result of such factors as pension plans.[58]

375. We have reviewed the arguments with respect to the effect of unions on the operation of the labour market and the problems of drawing specific conclusions. It seems reasonable to take the pragmatic view that some union arrangements increase mobility while others decrease it. It is a risk that society takes when it adopts as public policy the encouragement of collective action. The challenge is to try to retain the beneficial effects of collective bargaining on the labour market while attempting to minimize the harmful features. However, to put the problem in perspective, we should emphasize again that collective bargaining is only one of several imperfections that currently restrict the efficient operation of the labour market. Moreover, even if the labour market functioned perfectly, it would not necessarily be wise to accept its results. It is probably safe to assert that neither untrammeled economic nor unrestrained institutional forces should be allowed to dominate.

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[57] John E. Parker and John F. Burton, Jr., "Voluntary Labor Mobility in the U.S. Manufacturing Sector", *Industrial Relations Research Association Proceedings,* 1967, pp. 61-70.

[58] Arthur M. Ross, "Do We Have a New Industrial Feudalism", *American Economic Review,* December 1958, pp. 903-920.

COLLECTIVE BARGAINING AND EQUITY IN THE DISTRIBUTION OF INCOME

376. Unions and collective bargaining are often visualized as means of bringing about greater equity in the distribution of income. Indeed, one of the major rationales, initially for permitting and later for encouraging unions, was to provide workers with a countervailing power against that of management, and thus to realize a greater share of enterprise and national income. Organized labour's impact in both respects remains highly debatable.

377. As between organized labour and capital in many units or sectors of the economy, collective bargaining may lead, at least initially, to a shift of revenue in favour of the employees. But there is relatively little evidence to bear out even this limited proposition, let alone the view that there is a continuing shift in favour of the employees.

378. In the economy as a whole, it is equally difficult to prove anything about the influence of collective bargaining on the distribution of income between labour and capital. Economists are divided on the issue. Some argue that whatever increase there has been in labour's share of national income may be attributed to the shift of former owner-operators, such as independent farmers earning entrepreneurial income, to the status of workers earning wages or salaries. Others assert that increasing capitalization would have increased the share of income going to capital at the expense of that going to labour had it not been for unions and collective bargaining. In any event, there has been no marked change in the share of national income going to labour during comparable periods over the past 30 or 40 years.[59]

379. Thus, at both the micro and macro levels it is difficult to demonstrate anything definitive about the impact of collective bargaining on the relative income shares of labour and capital. The interaction of market and other institutional forces is so intertwined with those of collective bargaining that it is hazardous to be dogmatic on the subject.

380. How has organized labour affected the distribution of the share of national income going to workers? Collective bargaining has not removed income disparities among workers themselves. Collective bargaining has not eliminated, and may even have exaggerated, the wide range of basic rates which prevail both within and between trades and occupations, plants, firms and industries, and localities, provinces and regions. The differentials are even wider when non-union as well as union rates are taken into account. Among both organized and unorganized workers some of the disparities are so great that institutional forces are hardly the main variables. More basic in most cases are the relative productivities of the various groups involved. Nonetheless, one cannot escape the conclusion that segments of the labour movement may, to some extent, be aggravating existing tendencies in favour

[59] See S. A. Goldberg, "Long-Run Changes in the Distribution of Income by Factor Shares in Canada", *The Behaviour of Income Shares,* (Princeton, National Bureau of Economic Research, 1964). For post-war data see Table 8 (p. 64) Part 3.

of already privileged groups of workers who do much better than their unorganized as well as some of their organized counterparts. Union leaders themselves have acknowledged that this is a real possibility.[60]

381. One cannot assume a correlation between the results of collective bargaining and any particular concept of equity. Collective bargaining is basically a power struggle; the outcome is more a reflection of the relative economic positions of the protagonists than of the merits of their claims and counterclaims in terms of some standard of equity.

COLLECTIVE BARGAINING AND INDUSTRIAL CONVERSION

382. The term industrial conversion embraces all major changes that may have a permanent disruptive effect on the employment relationship. It covers far more than technological change or automation, since these are only one set of forces at work leading to such disruption. Some other forces giving rise to employee dislocation include resource depletion, product obsolescence, and domestic and foreign market shifts.

383. Industrial conversion has a vital part to play in a dynamic growing economy. Change is essential to society and to individual enterprises. To society, change is the key to the increased productivity necessary to meet latent public needs and unsatisfied desires. To individual enterprises, change is essential to remain sufficiently competitive to survive, while paying good wages, satisfying customers needs, and generating reasonable profits.

384. But industrial conversion is not without cost to those caught in its path. There is no evidence to suggest that change in general produces a net reduction in employment; but it is the cause of worker displacement and on-the-job disruption. The costs for those adversely affected can be great, and to them it is of little comfort that society as a whole, their employer, and even their fellow workers may benefit from the change. They want to know what is going to be done to protect them.

385. Society must provide a satisfactory answer for at least two reasons:

> Both on economic and on social grounds, it is important to reduce the fear that exists among workers concerning their fate in the face of change. Economically, it makes sense to do so in order to prevent the ingrained resistance to any form of industrial conversion that can arise from such fear. Socially, it is a matter of urgent necessity because it is intolerable for the majority who expect to benefit from change to ask the minority to bear the brunt of that change.[61]

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[60] Louis Laberge, *Opening Speech of the President,* (Montreal, Quebec Federation of Labour, 10th Convention, October 4, 1967); and Montreal Labour Council, QFL-CLC, *The Third Solitude,* (Montreal, September 1965).

[61] DOMTAR Joint Labour-Management Sub-Committee Report on Human Adjustment to Industrial Conversion, "A Statement of Principles and a Specific Proposal", (Montreal, October 1966), mimeographed, p. 6.

386. Until recently the task of finding an adequate response to this challenge was left largely to collective bargaining. Unions were left with a choice of attempting to resist, to compete with or to control change or to chose some combination of the three.[62] Historically, there are examples of resort by unions to the two former alternatives, but for the most part obstructionism has proved futile, particularly as a long run tactic. Unions today generally accept the change as inevitable and even desirable concomitance of the existing socio-economic-political system and concentrate their efforts on cushioning its impact on their members.[63]

387. The labour movement has met with varying degrees of success in attempting to use collective bargaining for this purpose.[64]. In most cases unions have won full seniority protection, so that junior employees are the first to be affected by displacement. However, unions have sometimes demanded and won such narrow and confining seniority units that they have diminished the security afforded senior workers. Through collective bargaining, most unions have also won the right to grieve on wages and conditions established on new or restructured jobs. In a few cases they have secured a voice in the initial setting of those wages and conditions.

388. The labour movement has also won some procedural and substantive concessions in other areas. Procedurally, numerous collective agreements now provide for a measure of advance notice and consultation.[65] Substantively, there are even more agreements that include retraining, relocation, income maintenance, severance pay, early retirement, or similar types of provisions that offer some relief to those dislocated.[66]

389. In some cases, more comprehensive approaches have been developed. The outcome of lengthy labour-management deliberations in the DOMTAR Company, covering 10,000 employees across the country, was a sophisticated plan which is now being implemented. A similar though less comprehensive plan has been adopted by the railways and the non-operating brotherhoods.[67] Other examples may be found both in this country and in the United States.[68]

390. While acknowledging the role that collective bargaining can play in this area, it is important to recognize its limitations. These we mention in an earlier section. First is the limited coverage of trade unionism. For the majority of workers who do not benefit from collective bargaining, it does not afford any possible protection. Second are the varying degrees of protec-

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[62] Sumner H. Slichter, *Union Policies and Industrial Management,* (Washington, the Brookings Institute, 1941), pp. 197-99 and 279-81.

[63] Canadian Labour Congress, "Technological Change and Manpower Policy", *Statement of Economic Policy,* 7th Constitutional Convention, (Toronto, May 1968), pp. 6-7.

[64] A. Kruger, *op. cit.,* and Canada Department of Labour, Economics and Research Branch, *Response to Technological Change,* 1967.

[65] Canada Department of Labour, Economics and Research Branch, *Response to Technological Change,* 1967.

[66] *Ibid.*

[67] Canada Department of Labour, *Labour Gazette,* November 1966, p. 631.

[68] A. Kruger, *op. cit.*

tion afforded different workers who are covered by collective bargaining. Some benefit from elaborate schemes, others are afforded no protection whatever. Third is the inequitable and uneconomic nature of some of the provisions which have been negotiated. For example, most severance pay plans are based on years of service, with benefits often bearing no relationship to the relative needs of those affected. Individuals with the same seniority usually receive the same compensation despite the fact that some may move directly to equivalent jobs while others may never find regular work again. Last is the fact that collective bargaining cannot create employment. It can at best only serve to preserve obsolete jobs by sanctioning unnecessary work practices, or to reshuffle job holders through such measures as early retirement plans designed to induce older workers to retire so that younger workers will not be displaced.[69]

391. Given the limitations of collective bargaining in this area, the question remains, what should be done? A combination of public and private policies is needed to provide a framework for dealing with change, these should be flexible enough to take care of the individual problems that arise, and efficient enough to ensure that the benefits of change are not consumed in the effort to cope with the adjustments. We return to this challenge in Part Five.

THE ROLE OF CONFLICT IN THE SYSTEM

392. There is a basic characteristic of the collective bargaining system that is seemingly contradictory. Paradoxical as it may appear, collective bargaining is designed to resolve conflict through conflict, or at least through the threat of conflict. It is an adversary system in which two basic issues must be resolved: how available revenue is to be divided, and how the clash between management's drive for productive efficiency and the workers' quest for job, income and psychic security are to be reconciled. Other major differences, including personality conflicts, may appear from time to time but normally they prove subsidiary to these two overriding issues.

393. For the most part Canada has deliberately opted for a system in which disputes over these matters may periodically be put to a test of economic strength in the form of a strike or lockout. Although this system may seem costly, it may well be more healthy and less expensive in resolving labour-management disputes than any other method. Barring the opportunity to have an economic confrontation from time to time, the parties are compelled to contain their differences or submit them to some kind of binding third party intervention. In neither event is there assurance of a result that would settle the matter or clear the air. Resort to economic sanctions might still prove inevitable. An employer might shut his operation. Employees might engage in absenteeism or slowdowns or industrial sabotage. The

[69] Such an approach has been recommended in some cases. See J. R. Donald, *The Cape Breton Coal Problem*, (Ottawa, Queen's Printer, 1966).

advantage of the present collective bargaining system in allowing the parties to let off steam may, in the long run, be more important than the traditionally accepted role of a potential work stoppage as a means of inducing the parties to resolve their differences. The strike or the lockout thus may serve either as a catalyst or as a catharsis, if not both.

394. The fact that conflict plays an essential role in the industrial relations system does not preclude other means of resolving labour-management differences. There are some areas where public policy rules are economic confrontations. It is at present illegal under most circumstances for workers to strike over recognition of their chosen bargaining agent. The certification procedure has been developed as an effective substitute for the work stoppage in this area. Similarly, in all Canadian jurisdictions but one, compulsory arbitration of contract or rights disputes has been substituted for open economic warfare during the term of a collective agreement. Although organizational and grievance strikes have not been eliminated in this country, they have for the most part given way to these alternative forms of recourse.

395. It is more difficult to find a viable substitute for the right to resort to economic action over interest disputes. Superficially the most appealing answer would seem to lie in compulsory arbitration.[70] If grievance disputes are by law to be arbitrated, why not interest disputes? In grievance disputes, the issue is the interpretation and application of already established rights. In interest disputes, the rights themselves are at stake. It is one thing to compel two parties to submit to arbitration on the terms of an agreement which they have negotiated and signed; it is another to impose a settlement in the absence of their mutual consent.

396. Even if this basic objection to compulsory arbitration is to be rejected or outweighed by other considerations, there are other shortcomings. One of the worst features of compulsory arbitration is its potentially corrosive effect on the decision making process both within and between unions and management. It is natural that where both sides expect arbitration at the end of the line, should they fail to agree, there will be a tendency to hold back a little for fear of establishing a new floor or ceiling for the arbitration. There will be an equal reluctance on both sides to concede anything lest it be something the arbitrator might force them to give in his award. Compulsory arbitration need not have these inhibiting effects on collective bargaining, but there is a real risk that it will, especially the longer and more often it is imposed.

397. Compulsory arbitration may also serve as a crutch for weak leadership in either union or management. Where a union leader can force a dispute to arbitration, he can avoid some of the compromises within the union that invariably go into a settlement. Instead of making the hard decisions about wage gains as against fringe benefits, across-the-board absolute as against percentage increases, skilled trades differentials, and other issues that can

[70] See Donald J. M. Brown, *Compulsory Arbitration,* Task Force Study.

prove politically embarrassing, he can take all internal conflicts to the arbitrator as demands and let him make the unpopular decisions. Similar evasion of responsibility can take place in management. Once a leader of any kind finds an easy way out of some of his dilemmas, he is likely to behave in the same manner in other areas. In the long run the effect would be to undermine both the leadership in question and the collective bargaining process itself.

398. Consideration must also be given to the propriety of subjecting some forms of income, namely wages and salaries, to control while not similarly regulating others. Such a dichotomy is not easy to accept in a society which practises anything resembling private enterprise or cares at all about equity. The principle of controlling only labour's income may seem more valid where it is employed in enterprises whose products are sold at publicly regulated prices, such as rate-regulated utilities, but even there it is not fully tenable unless the prices of the other factors of production are likewise controlled. This dilemma arises when compulsory arbitration is imposed anywhere. It has a natural tendency to spread, because there is no easy way of confining it to a few sectors of the economy. It becomes an arbitrary process arbitrarily imposed, and as such it is difficult to set limits to its extension. The farther it spreads the greater the potential threat to the very nature of the present socio-economic-political system in which government intervention in a final and binding manner is, as a matter of principle, held to a minimum.

399. Short of such extreme measures, there are other private and public avenues to be explored. More sophisticated personnel practices, for example, might do much to lessen underlying problems that provoke industrial conflict. In this context, we call attention to the work of behavioural scientists in the industrial relations field.[71] Although not fully developed, applied research in the behavioural sciences is already having a significant impact on the organization of a number of companies which have become concerned about the optimum utilization of their labour force. A variety of new and old approaches is being enlisted to involve workers more meaningfully in their jobs. Many of these approaches have yet to be proved, and few have permeated far into the ranks of large enterprises. Nevertheless, an increasing fund of experience suggests that job design, job enlargement and related practices can make work a much more satisfying pursuit. How this will affect labour-management relations is still in doubt, but its potential for improvement would seem to be great.

400. More can be done to improve the normal forms of government intervention in industrial relations as is suggested by Table 14, which shows the stages of negotiations at which settlements were reached in the period 1953-1966 in the federal and provincial jurisdictions. Recently there have

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[71] See G. K. Cowan, *The Relevance of Communications and Behavioural Knowledge to Labour-Management Relations—A New Route,* Task Force Study.

TABLE 14

STAGE OF NEGOTIATIONS AT WHICH AGREEMENT WAS ACHIEVED[1]

(Percentage Distribution of Employees Affected)

1953—1966

Stage	1953	1954	1955	1956	1957	1958	1959	1960	1961	1962	1963	1964	1965	1966
Bargaining	61.6	38.7	62.5	52.1	62.8	30.6	50.3	67.4	32.7	38.2	64.9	27.7	41.7	38.1
Conciliation Officer	2.9	10.0	2.8	2.4	0.9	10.9	9.2	12.7	20.9	16.2	9.2	25.2	22.0	10.3
Conciliation Board	26.6	15.3	28.7	14.0	27.0	19.9	13.2	15.6	8.8	32.4	9.3	8.4	13.3	26.5
Post-Conciliation Bargaining	5.3	1.1	1.5	25.9	2.0	33.5	8.6	2.3	36.4	5.8	11.8	29.3	11.3	10.8
Arbitration	—	30.9	—	—	—	—	0.2	—	—	2.1	1.0	0.9	0.8	0.9
Post-Arbitration Bargaining	—	—	—	—	—	0.1	—	—	—	—	0.2	—	—	—
Strike	1.8	2.6	3.8	5.4	6.8	4.3	9.4	2.0	0.9	4.9	3.6	8.7	9.9	13.5
Post-Strike Bargaining	—	—	0.5	—	—	0.4	9.0	—	—	0.4	—	—	0.7	—
Not Recorded	1.9	1.3	0.2	0.2	0.4	0.2	—	—	0.3	—	—	—	0.3	—

[1]For negotiating units covering 500 or more employees, exclusive of Construction.

NOTE: Columns may not add up to 100 per cent due to rounding.

SOURCE: Alton W. J. Craig and Harry J. Waisglass, "Collective Bargaining Perspectives", *Relations industrielles/Industrial Relations*, Vol. 23 (1968) No. 4, page 584.

been marked changes in most jurisdictions in standard conciliation procedures. The traditional two-stage procedures involving a government conciliation officer and a tri-partite conciliation board had become so accepted in many cases that the parties had built it into their tactics. The resulting decline in the effectiveness of the process led to the introduction, in all but the federal jurisdiction, of more discretion in the setting up of boards. This discretion has contributed to more effectiveness at both the officer and board levels because the parties can no longer assume that the officer's services will be followed by a board. This change, together with the upgrading of conciliation officiers and a more sophisticated application of both pre- and post-conciliation services in some jurisdictions, has increased the effectiveness of this aspect of government activity.

401. Some of these developments overlap those designed to encourage more co-operation between the parties. Labour-management co-operation in various forms has had a long history in this country.[72] The Labour-Management Consultation Service of the Canada Department of Labour was established during World War II. Until recently its role was one of encouraging the formation of joint labour-management committees to deal with non-negotiable matters, thus complementing the activities of bargaining committees. It has since abandoned this distinction and adopted an approach to labour-management problems similar to that of the Manpower Consultative Service of the Department of Manpower and Immigration which encourages and provides financial assistance to the parties to set up special study committees to examine manpower problems associated with technological and other change. Both organizations are now engaged essentially in the kind of problem solving that has become characteristic of preventive mediation in the United States, and of the variety of human relations committees that have been established in that country.[73]

402. More refined forms of labour-management collaboration have made their appearance under a variety of names. Generally they fall within a range of union-management relationships from consultation to participation. One of the most widely known is the Kaiser plan[74] which entails a production cost-sharing formula under which employees participate in savings and have an opportunity through joint committees to offer suggestions leading to savings. Variations of this approach, including straight profit sharing, may be found especially in non-union establishments. Foreign experiments include codetermination in Germany[75], under which the workers' representatives are involved in the decision making process at the highest level of company organization.

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[72] W. Donald Wood, "The Current Status of Labour-Management Co-operation in Canada", *National Conference on Labour-Management Relations,* (Ottawa, Economic Council of Canada, 1964), pp. 15-67.

[73] J. T. Montague, "Recent American Developments and Experiments in Labour-Management Relations", *National Conference on Labour-Management Relations, op. cit.,* pp. 233-279.

[74] Ibid., pp. 245-246.

[75] W. H. McPherson, "Codetermination in Practice", *Industrial and Labour Relations Review,* Vol. 8, No. 4, July 1955, pp. 479-519.

403. None of these approaches has eliminated conflict between union and management, but often they have served to improve the climate and thereby the general character of the relationship between the parties. Short of this, they have sometimes clarified the dividing lines by inducing the parties to work together where they have common interests. As one study[76] has highlighted, both distributive issues (those on which the parties are bound to divide) and integrative issues (those on which there is expectation of com-

TABLE 15

STRIKES AND LOCKOUTS IN CANADA

1945–1967

Year	Strikes and Lockouts[1]	Workers Involved	Duration in Man-Days	Man-Days as a Percentage of Estimated Working Time
1945	197	96,068	1,457,420	0.19
1946	226	138,914	4,515,030	0.54
1947	234	103,370	2,366,340	0.27
1948	154	42,820	885,790	0.10
1949	135	46,867	1,036,820	0.11
1950	160	192,083	1,387,500	0.15
1951	258	102,793	901,620	0.09
1952	219	112,273	2,765,510	0.29
1953	173	54,488	1,312,720	0.14
1954	173	56,630	1,430,300	0.15
1955	159	60,090	1,875,400	0.19
1956	229	88,680	1,246,000	0.11
1957	245	80,695	1,477,100	0.13
1958	259	111,475	2,816,850	0.25
1959	216	95,120	2,226,890	0.19
1960	274	49,408	738,700	0.06
1961	287	97,959	1,335,080	0.11
1962	311	74,332	1,417,900	0.11
1963	332	83,428	917,140	0.07
1964	343	100,535	1,580,550	0.11
1965	501	171,870	2,349,870	0.17
1966	617	411,459	5,178,170	0.34
1967	438	409,932	4,045,060	0.26

[1]Strikes and lockouts in existence during year.

SOURCE: Canada Department of Labour, Economics and Research Branch, *Strikes and Lockouts in Canada*, (Ottawa, Queen's Printer, Annual).

[76] Richard E. Walton and Robert B. McKersie, *A Behavioral Theory of Labour Negotiations*, (New York, McGraw-Hill, 1965).

mon interest) arise between employers and employees. While some of these new approaches have tended to put the areas of inevitable conflict into proper perspective, they have not eliminated those areas nor the need to settle them by a test of economic strength as a last resort.

PUBLIC INCONVENIENCE AND HARDSHIP

404. Lost time due to work stoppages in Canada has been on the upswing in recent years. Nonetheless, as Table 15 shows, the country has yet to duplicate the 1946 record when just over one-half of one per cent of all time worked was lost because of strikes and lockouts. Although this does not

TABLE 16

NUMBER OF INDUSTRIAL DISPUTES IN VARIOUS WESTERN COUNTRIES

1945–1966

Year	Canada	United States	United Kingdom	Australia	France	Sweden
1945	197	4,750	2,293	945	N/A	163
1946	228	4,985	2,205	869	528	137
1947	236	3,693	1,721	982	2,285	81
1948	154	3,419	1,759	1,141	1,425	47
1949	137	3,606	1,426	849	1,426	31
1950	161	4,843	1,339	1,276	2,586	21
1951	259	4,737	1,719	1,344	2,514	28
1952	222	5,117	1,714	1,627	1,749	32
1953	174	5,091	1,746	1,459	1,761	20
1954	174	3,468	1,989	1,490	1,479	45
1955	159	4,320	2,419	1,532	2,672	18
1956	229	3,825	2,648	1,306	2,440	12
1957	245	3,673	2,859	1,103	2,623	17
1958	259	3,694	2,629	987	954	10
1959	216	3,708	2,093	869	1,512	17
1960	274	3,333	2,832	1,145	1,494	31
1961	287	3,367	2,686	815	1,963	12
1962	311	3,614	2,449	1,183	1,884	10
1963	332	3,362	2,068	1,250	2,382	24
1964	343	3,655	2,524	1,334	2,281	17
1965	501	3,963	2,354	1,346	1,674	8
1966	617	4,405	1,937	1,273	1,711	19

N/A=Information not available.

NOTE: See Sources for discussion of variations in the data between countries.

SOURCES: 1945–1956, A. M. Ross and P. T. Hartman, *Changing Patterns of Industrial Conflict*, (New York, John Wiley & Sons Inc., 1960); 1957–1966, International Labour Office, *Year Book of Labour Statistics* (Geneva I.L.O. 1968).

reduce the significance of recent time loss because of industrial conflict, it helps to put the rate of loss in perspective. It is also worth noting that production lost because of work stoppages does not approach that caused by unemployment or sickness. Moreover, in many industries much of the output supposedly lost through strikes and lockouts is made up before or after the stoppage when resources are pressed to greater capacity. None of these considerations obviates the fact that conflict sometimes occurs in industries where there is no opportunity to make up for lost time and where indirect effects can be serious. Nor can it be denied that stoppages in other industries are occasionally so prolonged that costs can never be recovered.

405. Tables 16 to 19 contrast Canada's strike and lockout record with that of other countries. Although the available data are not fully comparable, the figures show in a variety of ways the relative performance of a number of countries. On none of the bases used in these tables does Canada show up

TABLE 17

WORKING DAYS LOST PER STRIKER IN VARIOUS WESTERN COUNTRIES

1945–1966

Year	Canada	United States	United Kingdom	Australia	France	Sweden
1945	15.2	11.0	5.3	6.7	N/A	85.0
1946	32.4	25.2	4.1	5.6	2.1	20.8
1947	23.0	15.9	3.9	4.1	7.6	2.2
1948	20.7	17.4	4.6	5.2	2.0	24.8
1949	20.7	16.7	4.2	5.0	1.6	21.0
1950	7.2	16.1	4.6	1.8	7.8	16.7
1951	8.8	10.3	4.4	2.1	2.0	35.1
1952	23.8	16.7	4.3	2.3	1.5	37.4
1953	23.7	11.8	1.6	2.1	5.5	22.2
1954	23.7	14.8	5.5	2.4	1.1	3.2
1955	31.2	10.6	5.6	2.3	2.9	40.7
1956	14.0	17.4	4.1	2.6	1.4	2.5
1957	18.3	11.9	6.2	1.9	1.4	32.7
1958	25.3	11.6	6.6	1.6	1.0	178.6
1959	23.4	36.7	8.2	1.5	2.1	19.3
1960	15.0	14.5	3.7	1.2	1.0	12.5
1961	13.6	11.2	3.9	2.0	1.0	15.0
1962	19.1	15.1	1.3	1.4	1.3	1.4
1963	11.0	17.1	3.0	1.4	2.3	8.8
1964	15.7	14.0	2.6	1.7	1.0	17.7
1965	13.7	15.0	3.3	1.7	0.8	16.5
1966	12.3	13.0	4.4	1.9	0.8	12.0

N/A = Information not available.

SOURCES: See Table 16.

TABLE 18

WORKERS INVOLVED IN STRIKES AS A PERCENTAGE OF UNION MEMBERSHIP IN VARIOUS WESTERN COUNTRIES

1945–1967

Year	Canada	United States	United Kingdom	Australia	France	Sweden
1945	13.5	28.4	6.7	26.3	N/A	12.0
1946	16.8	37.2	6.0	27.6	2.7	0.1
1947	11.4	16.1	6.8	24.4	42.8	4.8
1948	4.4	14.6	4.6	22.3	115.1	0.5
1949	5.1	22.4	4.7	17.4	98.4	0.1
1950	—	17.9	3.3	26.9	38.2	0.2
1951	10.0	15.1	4.0	24.2	48.7	1.1
1952	10.5	23.4	4.4	30.9	36.1	0.2
1953	4.6	14.8	14.5	29.5	61.5	1.9
1954	4.9	9.2	4.7	20.7	52.8	0.6
1955	4.7	15.8	6.9	24.7	48.2	0.3
1956	6.6	10.9	5.2	23.6	N/A	0.1
1957	5.8	8.0	13.8	18.6	N/A	N/A
1958	7.7	12.1	5.4	15.6	N/A	N/A
1959	6.5	11.0	6.7	12.8	N/A	N/A
1960	3.4	7.7	8.3	31.5	N/A	N/A
1961	6.8	8.9	7.8	15.8	N/A	N/A
1962	5.2	7.4	44.7	18.1	N/A	N/A
1963	5.8	5.7	5.9	20.6	N/A	N/A
1964	6.7	9.7	8.7	26.6	N/A	0.1
1965	10.8	9.0	8.5	22.5	N/A	0.09
1966	23.7	11.0	5.3	18.6	N/A	0.01
1967	13.1	N/A	N/A	N/A	N/A	1.3

N/A = Information not available.

SOURCES: 1945–1966, see Table 16; 1967, Canada Department of Labour.

well except in comparison with the United States, whose industrial relations system is most parallel with this country's. Two other nations whose record in the industrial relations sphere is frequently cited are Sweden and Australia.

406. Sweden experiences the fewest strikes and lockouts and the least lost time from industrial conflict; these are the reasons why so many commentators suggest that Canada should follow her example. But many of Sweden's characteristics diverge sharply from those of this country. First, Sweden is a comparatively small unitary state with a homogeneous population. Second, Swedish management long ago decided to accept trade unionism as a legitimate and positive force in the economy. Third, the work force is highly organized, with some estimates suggesting that over 70 per cent of the potential work force is unionized. Fourth, union and management

TABLE 19

WORKERS INVOLVED IN STRIKES AS A PERCENTAGE OF NON-AGRICULTURAL PAID WORKERS IN VARIOUS WESTERN COUNTRIES

1945–1967

Year	Canada	United States	United Kingdom	Australia	France	Sweden
1945	3.3	8.7	3.0	16.5	N/A	6.7
1946	4.7	11.1	2.9	16.6	2.3	0.1
1947	3.3	5.0	3.1	14.4	36.7	2.7
1948	1.3	4.4	2.2	13.4	78.2	0.3
1949	1.5	7.0	2.2	10.9	50.7	*
1950	5.6	5.4	1.5	16.9	17.8	0.1
1951	2.8	4.7	1.9	15.5	20.0	0.7
1952	3.2	7.3	2.1	19.5	13.1	0.1
1953	1.5	4.8	6.9	19.4	20.4	0.2
1954	1.6	3.2	2.2	13.9	14.9	0.4
1955	1.5	5.3	3.2	16.2	11.9	0.2
1956	2.1	3.7	2.4	15.4	10.9	0.1
1957	1.9	2.6	6.9	N/A	35.7	N/A
1958	2.6	4.0	2.7	N/A	13.3	N/A
1959	2.2	3.5	3.3	N/A	11.4	N/A
1960	1.1	2.4	4.1	N/A	12.9	0.05
1961	2.1	2.7	3.8	N/A	15.2	N/A
1962	1.8	2.2	21.6	N/A	9.8	N/A
1963	1.7	1.7	2.9	N/A	13.2	N/A
1964	2.0	2.9	4.2	N/A	11.9	N/A
1965	3.2	2.6	4.1	N/A	7.9	N/A
1966	7.3	3.1	2.5	N/A	11.7	N/A
1967	4.2	N/A	N/A	N/A	N/A	N/A

N/A=Information not available.
*Less than 0.1 per cent.
SOURCES: *See Tables* 16 and 19.

have strong central bodies to represent their collective interests both in bargaining, which is itself highly centralized, and in other areas. Fifth, Sweden has been governed for over thirty years by a Social Democratic Party that enjoys the support of the trade union movement. Many other differences could be cited. These should be enough to indicate why Canada should not be expected to emulate Sweden's industrial relations experience in the foreseeable future.

407. Australia's strike and lockout record will disappoint those who hold out great hopes for compulsory arbitration as a solution to Canada's industrial relations problems.[77] In most years Australia experiences more

[77] See J. E. Esaac, *A Report on Compulsory Arbitration in Australia*, Task Force Study.

strikes and lockouts than does Canada. They are much shorter than work stoppages in this country and proportionally less time is lost, but stoppages serve a different purpose in Australia. Seldom do they become true tests of economic strength. Instead they are usually political or demonstration stoppages designed to call attention to workers' grievances so the authorities will give them a better break the next time. Sometimes, as in the recent round of "arbitrated" wage increases in New Zealand, which has a similar system, the process becomes so convoluted that the arbitration tribunal reverses itself and increases its awards. Even if Canada could move in the direction of the Australian model, which is highly unlikely because of the differing industrial relations histories and institutions of the two countries, it is questionable whether it would prove useful.

408. Strikes and lockouts are an indispensable part of the Canadian industrial relations system and are likely to remain so in our present socio-economic-political society. Where union and management cannot otherwise resolve their differences, there is bound to be some inconvenience and perhaps even hardship for non-participants. Often such inconvenience or hardship is minimal, because there is stockpiling in anticipation of the stoppage or because alternative sources of supply are available. Where the length of the stoppage or the type of product or service involved is such as to rule out either of these possibilities, serious problems can confront individuals, groups and the public at large.

409. The recent history of industrial conflict in this country appears to have made the public less tolerant of work stoppages. This is not surprising, since many of the strikes that have taken place in the past few years have occurred in sectors of the economy where it was widely held that any kind of stoppage was unthinkable. Yet we have had fairly lengthy confrontations in several of these sectors. Examples include a nine-day nationwide railway strike, lengthy hospital and school strikes in Quebec, a six-week garbage strike in Vancouver and a shorter one in Toronto, and a three-week postal strike. Many people were inconvenienced by these stoppages, a few were hit hard, but in no case is there a record of an emergency or a disaster.

410. At a time when experience is showing that society can, in fact, take limited work stoppages in a wider range of industries than was thought possible a few years ago, how does one explain the attitude of the public? In part, it is because the public no longer cares if it can absorb a work stoppage without undue hardship. The public simply does not want to tolerate strikes or lockouts in certain industries regardless of how little actual harm they do. This attitude can be attributed to the rash of strikes that have caught the headlines in the past two or three years. Also, because of the increasing interdependence of society, there is less willingness to distinguish between inconvenience and hardship.[78] Where once the public would put up with a great deal of inconvenience and quite a bit of hardship, it now seems less

[78] See Pierre Verge, *Les critères des conflits créant une situation d'urgence,* Task Force Study.

inclined to accept much of either. Perhaps even more important is the apparent feeling that stoppages are contributing to inflation and the difficulty of managing the economy.

411. Whatever the source of growing public concern, it poses a serious challenge to our present concept of collective bargaining and all that is dependent on it. We have already stressed the essential role of the work stoppage in the collective bargaining sytem. If the system is worth preserving, the right to strike and lock out cannot be sacrificed. Yet they are threatened by a public opinion that must show more understanding if irresistible pressures are not to place the whole process in jeopardy. The answer may lie in a better informed public, but that will not come easily nor will it by itself suffice. In addition, some way must be devised to assure the public that serious steps will be taken to prevent the occurrence of true emergencies. Delicate problems of identification and handling must be surmounted before the public can be persuaded that some inconvenience and hardship is a small price to pay for the maintenance of the present collective bargaining system and the basic human rights on which it is founded.

LAW AND THE BEHAVIOUR OF THE PARTIES[79]

412. Reference was made earlier to the varying degrees of acceptance by labour and management of the collective bargaining system, including the attitudes of the parties toward both the principles involved and the prevailing rules. It was noted that their views tend to diverge more sharply with respect to legal regulations than to the underlying precepts. Lack of acceptance of these rules manifests itself in violations of the law.

413. Before reviewing the nature and significance of these transgressions, it is well to be aware of the role of law in labour relations. As in other areas of life, law is a technique for ensuring orderly compliance with society's overall objectives and general standards of behaviour. To this end, special labour relations legislation has been enacted to establish the reciprocal rights and responsibilities of the parties in their industrial relationships.

414. The nature of these statutes reflects a public policy that clearly favours collective bargaining. Specifically, policy supports the formation of unions, encourages good faith negotiations, and presupposes the strike or lockout in the event of an impasse after the normal statutory procedures are exhausted, except during the term of a collective agreement when arbitration or the equivalent is required. In these respects the law is consistent and is relatively easily interpreted, though not always so easily enforced.

415. Compliance problems arise most acutely on the management side when employers choose to resist unions. When they do so openly and frontally, any illegal measures they take can usually be proved and remedied.

[79] See also Innis Christie and Morley Gorsky, *An Exploratory Study of the Efficacy of the Law of Unfair Labour Practices in Canada,* Task Force Study.

What remains are those cases where management employs more subtle tactics and abridges the spirit more than the letter of the law in ways which are difficult to detect or correct.

416. Judging by the record of litigation in the courts, as distinct from labour board proceedings, unions violate the framework of rules and regulations established under labour relations acts more often than management. But many of their infringements take place because of impatience over the slow-moving nature of the law. Certification delays, particularly in industries such as construction, often lead unions to resort to more direct methods for securing recognition. Illegal organization picketing and strikes, therefore, still occur. Drawn out conciliation proceedings have also occasionally provoked illegal stoppages in a variety of industries. Grievance arbitration delays have produced similar walkouts. In some cases, as was emphasized earlier, the stoppages have not been union inspired but rather have been a spontaneous reaction by rank and file workers to the frustrations that result from delays. Regardless of the cause, it is instructive to note that 26.6 per cent of the strikes that took place in Ontario during 1966 occurred during the life of a collective agreement and were therefore illegal.[80]

417. More troublesome of late have been transgressions of the law pertaining to the purpose, nature and form of picketing. Some of these illegal activities reflect inconsistencies between the statute law of labour relations and the common and civil law.

418. The common and the civil law have their roots deep in the soil of fundamental social values. Historic events in the growth of the common law record moments when these values are brilliantly revealed, when policies are dramatically restated, and when the rules are graphically reworked. The civil law preserves these values and the selection of policies in a civil code in language which permits the courts, through their judgments, to put a judicial gloss on the provisions of the code through which their constant burnishing and a reworking of their application in particular instances may be maintained.

419. England, the homeland of the common law, went through radical social change with the Industrial Revolution of the 18th Century. A hitherto agrarian society moved rapidly into an industrial era. With the change came a need for the accumulation of capital, a need compounded later by the demands of a developing colonial empire. A re-examination and redetermination of values led to the adoption of the doctrine of *laissez-faire*, of entrepreneurial freedom. Fiscal and manpower problems created by the Napoleonic Wars gave impetus to the selection of particular policies which denied freedom of action to combinations of employees. These policies and their derivative rules manifested themselves over the ensuing fifty years in legislation and in judgments of the courts.

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[80] For further reference, see A. W. R. Carrothers and E. E. Palmer (eds.), *Report of a Study on the Labour Injunction in Ontario*, (Toronto, Queen's Printer, 1966), Vol. 1, Part III, Table 40, p. 234.

420. In the latter half of the 19th Century, the British Parliament redetermined its policies to embrace the industrial relations system of collective bargaining and, as a consequence, to legitimize collective action of employees. Not so the common law. The bulk of cases coming before the courts involve conflicts between private citizens. They relate, in the main, to matters of private property, contract, and protection of the person. Even in the criminal law field, which is frequently categorized as public as distinct from private law, what is at stake beyond the maintenance of public order is the liberty of the individual citizen. The values in the laws devised to resolve conflicts in these areas of private rights echo through evocative concepts: a man's home is his castle; promises must be performed; it is better that ten guilty men go free than one innocent man be punished.

421. The orientation of the common law to private rights combined with the acceptance of the policy of *laissez-faire*—and perhaps with a confusion of policy with principle—had important implications for the development of the law as it related to the conduct of combinations of employees where they came into conflict with entrepreneurial rights. Within the past century, doctrines arose in the common law which have particular application to collective bargaining today. Ostensibly of general application, their particular impact in industrial relations is such that the doctrines have come to be known as industrial torts, or industrial civil wrongs. They are the tort of inducing breach of contract, the tort of conspiracy to injure, the tort of interfering with favourable trade relations, and the tort of intimidation.

422. Reflecting these common law doctrines and the vagueness of the *Criminal Code* provisions relating to picketing, the courts have frequently enjoined picketing for purposes, in places, at times or by means which the labour movement considered consistent with public policy supporting the statute law of collective bargaining. Moreover, plaintiff employers have sometimes resorted to procedures, notably the *ex parte* injunction, that temporarily but critically obviate certain basic rights, such as that of defending one's position, and seriously constrain the right of appeal.

423. The result has been a number of disturbing confrontations between the labour movement and the administration of justice. Where defiance of court orders has led to contempt proceedings and jailings and other criminal sanctions, law enforcement has triumphed. But the victory of the rule of law over the rule of men in these circumstances has not always been a salutary one. The outcome has often been a deepening of a feeling among labour leaders at all levels that there is a bias in favour of management interests in the substantive and procedural law and in the administration of justice. Society at large could suffer irreparable harm should that feeling become a pervasive conviction.

424. The courts are at best in an awkward and uncomfortable position and at times perhaps in an impossible one. They exercise control and responsibility over a divided jurisdiction in which there has never been a full and proper integration of public policy. Until the statute law of labour relations

and the common and civil law of torts and delicts (civil wrongs) are reconciled, the judiciary will remain susceptible to criticism for reasons at least partially beyond their control.

425. Another disturbing aspect of current industrial relations is the amount of violence that has accompanied some recent disputes.[81] Most stoppages that lead to violence are effectively dealt with by the appropriate local law enforcement agencies. At times, however, these agencies seem unwilling or unable[82] to meet the situation; the law is compromised and further infringements are invited.[83] More serious is the publicity which incidents of violence attract. The natural result is to associate picketing with much more than free speech and normal persuasion. It adds an element of coercion not intended by the majority of picketers but created by the few who abuse the picketing process.

426. If defiance of the law is not to lead to general disrespect for law and order, two steps must be taken. Laws must be kept under constant surveillance and brought up to date and clarified as changing circumstances dictate; and they must be administered and enforced fairly and impartially.

[81] For example, International Brotherhood of Teamsters and Motor Transport Industrial Relations Bureau, January 20-May 2, 1966; and United Steelworkers of America, 1005 and Steel Company of Canada, August 5-September 1, 1966.

[82] For example, Toronto Newspaper Guild (Oshawa Unit) and The Oshawa Times, January 28-February 11, 1966; and United Steelworkers of America, Local 6500 and International Nickel Company of Canada Limited, July 14-August 8, 1966.

[83] For further reference see M. T. Mollison, "Labour News"; A. W. R. Carrothers and E. E. Palmer, (eds.), *Report of a Study on the Labour Injunction in Ontario*, (Toronto, Queen's Printer, 1966), Vol. 2.

PART FIVE

RECOMMENDATIONS AND OBSERVATIONS

RECOMMENDATIONS AND OBSERVATIONS

PUBLIC POLICY AND INDUSTRIAL RELATIONS

427. In Part Two we set out our reasons for accepting the foundations and essence of the present Canadian industrial relations system and the role of collective bargaining and trade unionism within that system. We accept these reasons despite the fact that the collective bargaining system complicates the simultaneous achievement of some of the country's goals, as indicated in Part Three, and in spite of the limitations and shortcomings observed in the system itself, as outlined in Part Four.

428. We continue to endorse the present industrial relations system in Canada not only because of its virtues, many of which were reviewed in Part Four, but also because we see no alternative that is compatible with the heritage of western values and institutions described in Part Two.

429. The alternatives essentially are three. First is unilateral decision making. It reposes all power in the industrial relations field in one entity, either the employer or the state. The second is bilateral decision making. It at least precludes any one party from holding a dominating position. It, however, still eliminates an interested party: labour, management, or the public as represented by government. The third is a multilateral approach. It overcomes the deficiency of bilateral decision making and recognizes the interplay of market and institutional forces which is inevitable in a mixed enterprise economy operating within a liberal democratic political system.

430. The Canadian industrial relations system is multilateral. Aside from the forces of supply and demand in the labour market, it features a high degree of employer determination, trade union participation, collective bargaining, and government involvement in a variety of capacities. Our central concern is with collective bargaining and trade unionism, both of which are indispensable elements within the total system of industrial relations. Within industry, unions serve as a countervailing power to management; and within the wider socio-economic-political sphere, they function as potential agents for transformation in an increasingly pluralistic society.

431. Collective bargaining is the mechanism through which labour and management seek to accommodate their differences, frequently without strife, sometimes through it, and occasionally without success. As imperfect an instrument as it may be, there is no viable substitute in a free society. For this reason the emphasis in the remainder of this Report is placed on how the existing system can be improved, extended and preserved by a combination of parliamentry support, federal-provincial co-operation and voluntary action by the parties of interest.

432. We seek to minimize the role of the state in the collective bargaining process and in places urge a reduction in state intervention; yet on balance we propose an increase in government involvement. Where we recommend more public participation in the industrial relations system our objective is to facilitate more constructive relations between labour and management and to protect the public interest. The alternative to this enlarged but still selective role for government could be greater state involvement on a broader basis in the future. This development must be avoided if the parties are to be persuaded to continue to assume responsibility for their behaviour.

FREEDOM TO ASSOCIATE AND TO ACT COLLECTIVELY

(1) Employee Freedoms

433. Freedom to associate and to act collectively are basic to the nature of Canadian society and are root freedoms of the existing collective bargaining system. Together they constitute freedom of trade union activity: to organize employees, to join with the employer in negotiating a collective agreement, and to invoke economic sanctions, including taking a case to the public in the event of an impasse. Collective bargaining legislation establishes rights and imposes duties derived from these fundamental freedoms, just as legislation in other fields protects and controls corporate action. Most of our recommendations relate to these derivative rights and duties which are susceptible to review and emendation.

434. In order to encourage and ensure recognition of the social purpose of collective bargaining legislation as an instrument for the advancement of fundamental freedoms in our industrial society, we recommend that the legislation contain a preamble that would replace the neutral tone of the present statute with a positive commitment to the collective bargaining system.

435. We recommend further that, in order to extend access to fundamental rights to associate and to act collectively, a number of classes of employee who are exempted from the operation of the statute no longer be exempted, subject in some cases to certain constraints at the discretion of the Canada Labour Relations Board.

436. In some industries extensive exclusions from bargaining units have been made on the ground that individuals were exercising management functions or were in a confidential capacity respecting labour relations. Some exclusions may be justified to avoid conflicts of interest which are implicit in a situation where a union bargains with management respecting a unit that includes managerial as well as non-managerial personnel. Nevertheless, the exclusions deny these persons access to the normal processes of collective bargaining. In our view, the exclusions should be held to a minimum.

437. Employees appropriately excluded on these grounds are effectively denied access to any form of collective bargaining. This is unjust in the case of supervisory and junior managerial employees. We recommend, therefore, that the statutory right of collective bargaining be extended to these employees, subject to their being placed in separate bargaining units and in separate unions, and provided further that these unions not be permitted to affiliate with other unions or labour organizations except those composed exclusively of similar types of employees. We would not extend these formal collective bargaining rights to middle and senior levels of management, on the ground that the extension would be incompatible with efficient management and the economic welfare of the country.

438. We recommend that collective bargaining be extended to persons employed in a confidential capacity in matters relating to labour relations, subject to the same provisos for supervisory and junior managerial employees.

439. We recommend that collective bargaining be extended to security employees and private police, subject to these same provisos.

440. We recommend further that public law enforcement officers and firefighters have the right to organize and to engage in collective bargaining subject to these same provisos insofar as public law enforcement officers are concerned. In view of the high public interest in the continuing availability of the services of these officers as well as firefighters, we also recommend that binding arbitration be substituted for the right to strike or lock out.

441. We recommend that the coverage of collective bargaining legislation be extended to employees who are members of licensed professions, provided the bargaining agent be a separate organization from the licensing body. Where self-employed professionals choose to act collectively to establish fee schedules or otherwise to protect their economic interests, a case can be made that they too be required to act through an organization other than their licensing body in order to avoid a temptation to employ licensing as a restrictive device to reduce entry and control market supply. We suggest that this subject receive further investigation; it would be an appropriate assignment for the Incomes and Costs Research Board whose creation we recommend in a later section.

442. We are concerned about accessibility to collective action by groups of self-employed persons who are economically dependent for the sale of their product or services on a very limited market or who for other

reasons may have economic characteristics of employees. We have in mind such groups as fishermen, owner-drivers of taxis, and independent owner-drivers of trucks and delivery vans. We recommend that the Canada Labour Relations Board be given discretion to recognize these groups as bargaining agents within a specified market and that upon such recognition they receive the protection of section 410 of the *Criminal Code* and section 4 of the *Combines Investigation Act* from the criminal law of restraint of trade and from the operation of combines legislation, except where there is evidence of a collusive arrangement between such groups and those who employ their services.

443. We wish to express concern about the lack of accessibility of collective bargaining legislation to agricultural workers and domestic servants. We make no recommendation in this respect because, except in the Yukon and Northwest Territories, these classes fall almost exclusively under provincial jurisdiction. Their exclusion as employees from collective bargaining does not, however, seem to us to be justified.

444. We recognize that there may be special bargaining unit determination problems in the case of many of the above groups. These problems do not lend themselves to legislated rules and regulations or to statutory guidelines. Consistent with our more general recommendations with respect to bargaining unit determinations, they must be left to the discretion of the Canada Labour Relations Board.

(2) Employer Freedoms

445. A corporate employer is substantially different in nature from a union; yet it is easy, under the pressure of treating the parties evenhandedly in the development of public policy, to fall into the error of attempting to treat them identically. We are mindful of the need to apply a standard of equivalence as distinct from that of equality, for equal treatment of unequal factors is bound to produce inequitable results. So it is in the area of freedoms essential to a dynamic collective bargaining system. The needs and purposes of employee freedom to associate and to act collectively are different from employer needs, as are freedom of speech and freedom to take one's case to the work force and to the public at the stages of organization and recognition and at the stage of negotiation, including that of striking and picketing.

446. In the preceding sub-section we considered the basic employee freedoms of association and collective action. Rather than deal here with the equivalent in employer freedoms, we find it convenient to give special consideration, in the section discussing management rights and responsibilities, to the subjects of management free speech and the legal position of employer associations. Not unrelated to the issue of basic collective bargaining freedoms is the issue of good faith bargaining. This question also is examined in a later section.

UNION RIGHTS AND RESPONSIBILITIES

(1) Bargaining Units[1]

447. The determination of the bargaining unit is a matter which is given to labour relations boards in Canada in their virtually unfettered discretion. The determination can be a crucial decision to collective bargaining, because the size and composition of the bargaining unit, the effective constituency of collective bargaining, determine to a significant extent the capacity of the employees for being organized into unions; and hence the likelihood of organization, the potential bargaining power of the union and the point of balance it creates with the power of the employer, and the potential effectiveness of collective bargaining for dealing with different issues; and hence the substantive matters that are covered in a collective agreement.

448. Criteria at present used by the Canada Labour Relations Board in determining the appropriateness of the bargaining unit include community of interest of employees (sometimes as decided by a ballot among all or some of the employees in question), the history of collective bargaining, custom in the industry, adequacy of representation given all employees in the unit, the nature of the skills of the employees, the technical adequacy of the bargaining agent to represent certain classes of employees, the viability of the unit, the effect on the operation of the employer, and the public interest in the maintenance of stable labour-management relations.

449. In its reasons for judgment in a recent decision, the Canada Labour Relations Board said in part:

> On any application for certification involving a proposed fragmentation of the existing unit particularly in a national communication or transportation field, the effect that the proposal if implemented would have on the maintenance of orderly collective bargaining and stable labour management relations is regarded by the Board as a matter of major consideration.[2]

In a later passage the Board indicated a further consideration, among other things, of "the general characteristics of [the profession concerned] and the nature of their work and factors of community of interest involved" in determining that a segment of a hitherto national unit "would constitute a viable and appropriate unit for collective bargaining".[3]

450. With the exercise of discretion on such grounds, with which we agree, we do not find the need for special legislation providing for regional units or otherwise giving statutory instructions to the Board in the exercise of its discretion. Nor do we find the need for continuing special statutory protection for craft units.

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[1] See E. E. Herman, *The Bargaining Unit*, Task Force Study.

[2] Canada Labour Relations Board, judgment on the application by Syndicat général du Cinéma et de la Télévision (CSN) for a unit of employees of the Canadian Broadcasting Corporation, (Ottawa, July 17, 1968), mimeographed, p. 12.

[3] *Ibid.*, p. 13.

451. We agree with the discretionary power now reposing in the Canada Labour Relations Board. We wish, however, to see collective bargaining liberated from any rigid bargaining unit patterns, in order that the system may be assisted to find its own level according to the interests of the parties. In contrast to the conglomerate of comparatively small units which prevail in many industries, we favour accessibility to wider bargaining units, company-wide units, multi-plant units, multi-employer units, multi-union units, and industrial as distinct from craft units in industrial plants. Similarly, where sound industrial relations call for a narrowing of units, the procedure for determining and redetermining bargaining units should be such as to facilitate that adoption.

452. At the present time the *Industrial Relations and Disputes Investigation Act* permits the Canada Labour Relations Board to review its own decisions and to change them. In our view, the parties of interest also should have the right to petition the Board to reconsider an existing unit in the interests of better industrial relations. Where the Board acts on its own motion or accedes to a petition, it should examine the problems of the industry, either on its own or by commissioned research, and should hold public hearings on the basis of that research and on related material presented by the parties. The exercise of this power could well be related to mergers and successions of corporations and trade unions.

453. We also favour in principle the possibility of determining different units for different purposes. There is likely to be a centralizing tendency in collective bargaining as parties seek to adjust to issues which have ramifications extending beyond existing bargaining units. Specific potential subjects are pension, health and welfare and training plans, and seniority. Where, on a voluntary basis, parties to different units can settle upon a special common unit for particular purposes, we recommend that the Canada Labour Relations Board have discretion to confirm the unit in a certificate, subject to such limitations as may be necessary to protect the interests of minority groups and to co-ordinate termination dates of collective agreements.

(2) Certification

454. A union may gain the right exclusively to represent employees in collective bargaining either by being recognized by the employer or by obtaining a certificate from a provincial Labour Relations Board granting that exclusive right. The federal legislation, however, does not support voluntary recognition. In our view it should, and we recommend that the statute be amended clearly to accommodate voluntary recognition.

455. One of the risks of voluntary recognition is that it is susceptible to abuse by the parties to the recognition for the purpose of precluding certification of another union; this in turn creates the risk of "sweetheart" agreements. We therefore recommend that where a collective agreement is negotiated through voluntary recognition, such recognition should be subject to challenge during the first year of the agreement on the ground that the union

does not represent a majority of the employees affected. Where the challenge is successful, the issue remains as to what disposition should be made of the collective agreement. We recommend that the employees be given power to petition the Board to terminate the agreement on the ground that it is a "sweetheart" arrangement. If on a review of the evidence the Board concludes that this is so, it should have the power to declare the agreement inoperative.

456. We also recommend changes respecting the measure of employee support which a union must show to gain consideration of its application and to obtain a certificate. Our object in these recommendations is to liberalize the availability of a certificate in order that a determination may be based on the wishes of a majority of employees who are willing to participate in the decision. The traditional standard for the determination of employee support of a union is membership in good standing. In our view the Canada Labour Relations Board should continue to have discretion in determining what evidence should be required of membership. Our recommendations relate to the amount of support required and the procedures by which employees may express their views.

457. We recommend that

(1) unless a union can demonstrate at least 35 per cent membership, its application for certification should not be entertained;

(2) where a union can demonstrate 65 per cent membership, it should be entitled to a certificate without a representation vote;

(3) where a union can show at least 35 per cent membership but less than 65 per cent membership, it should be entitled to a representation vote;

(4) where at least 50 per cent of the employees voting, as distinct from 50 per cent of employees eligible to vote, vote in favour of the union, it should be entitled to a certificate; we considered recommending a minimum percentage of the work force that must cast ballots before the election would be considered valid, but decided against it on the ground that it runs contrary to normal electoral practice and would constitute an invasion of the free franchise inasmuch as it would operate to the advantage of the employer or a rival union to discourage employees from entering the polling booth;

(5) a representation vote be conducted by the Canada Labour Relations Board at the place or places of employment, except that where there is no employment situs the vote should be by mail;

(6) there be provision for taking a pre-hearing ballot of employees at the request of the applicant to determine the wishes of the employees close to the time of application for certification should the results of a representation vote become relevant as the application is processed;

(7) the Canada Labour Relations Board have power to determine whether a ballot should be taken with a show of less than 35 per cent support, and whether a union should be certified without the required demonstration of support by ballot on a consideration of the impact of any employer unfair labour practice;

(8) where a union can show over 65 per cent membership but there is evidence that the membership was obtained by misrepresentation or there is evidence of misrepresentation in the records, such as to cast doubt on the union's degree of support, the Board should have discretion to order a vote or to deny a certificate; and

(9) a ballot take such form as will allow the employee to select from the options open to him, such as whether he prefers one union over another, or no union at all, or no union if he cannot be represented by the union of his choice; it is not possible to determine in advance of actual events whether this freedom of choice can be offered in a single ballot or whether it would require a run-off vote, and for this reason the Board should have discretion to determine the form by which the principle of free choice can best be implemented.

458. We agree with the present laws and regulations controlling the "open season" for changing union affiliations and barring unsuccessful applicants from reapplying within a given period. We therefore make no recommendations for change in these matters.

459. The construction industry presents many unique problems, not the least of which arises in connection with certification proceedings. The normal course of certification proceedings in manufacturing requires passage of time that, in the construction industry, is prejudicial to the union and to collective bargaining because most construction work is of comparatively short term duration. Impatience with procedures acceptable in manufacturing manifests itself in construction in the form of unlawful work stoppages or picketing to gain recognition. Later in this Report we recommend firmly against the legitimacy of such tactics. In order to meet the needs of collective bargaining in the construction industry, we recommend that the Canada Labour Relations Board be given power to authorize its field staff to issue interim certifications in the construction industry, subject to confirmation by the Board, and valid until the Board has an opportunity to review them.

(3) Successor Rights

460. The federal Act is silent on the subject of successor rights, a matter that has received attention by amendment to provincial legislation. The successor rights question is concerned with changes in the structure, legal personality or operation of an employer party to a bargaining relationship and with similar changes in a participating union. Specific issues relate

to the disposition of any application for certification, any certificate of bargaining authority and any collective agreement, and to determination of conflict between unions.

461. We recommend that

(1) where an employer or a union merely changes its name, the application, the certificate and the collective agreement should continue to bind the employer and the union;

(2) where there is a sale of assets as distinct from the sale of a business, neither an application, a certificate nor a collective agreement should follow the assets;

(3) where there is a business succession, the application, the certificate, and the collective agreement should follow the business, and where there is a union succession the successor union should also succeed to the application, the certificate and the collective agreement;

(4) where there is a corporate or union merger, the Canada Labour Relations Board should have discretion, as the Ontario Labour Relations Board now has, to sort out any issue relating to which union, if any, should succeed to the application and bargaining rights and in what unit, and to determine whether and to what extent a collective agreement should be binding on the parties; and

(5) where there is corporate or union dissolution, an application, a certificate and a collective agreement should cease to be binding provided, however, that parties to collective bargaining should be free to negotiate terms in a collective agreement establishing rights in the event of dissolution.

462. We make recommendations later respecting the issue of fair representation where two bargaining units are merged.

(4) Termination of Recognition

463. Decertification is the term most commonly used in Canadian jurisdictions to describe the cancellation of union bargaining rights. In Ontario the expression termination is used because it covers termination of voluntary recognition in addition to the cancellation of a certificate. Because of the wider implications of the expression we used the word "termination" in this section.

464. At the present time certification is binding for a minimum period of twelve months, a policy with which we find no basic disagreement. There are two reasons why it is important to guarantee to employees the right to reselect their bargaining agent. First, the certificate grants exclusive bargaining rights which no individual employee can countermand. Second, agreements between unions to minimize or eliminate raiding between rival unions, conduct which can be damaging to industrial relations, can serve to limit the ability of employees to select the union of their choice.

465. The basic justification for termination of bargaining rights is that the union has lost the support of the employees. This is primarily the business of employees and a case for termination should normally be carried by them, although we would not deny employers access to the termination procedure.

466. We recommend that

(1) where employees present evidence of less than 35 per cent support for decertification, the petition should be dismissed;

(2) where employees present evidence of 35 per cent or greater support for decertification, the Canada Labour Relations Board should conduct a representation vote, and a determination should be made on the basis of a majority of those voting;

(3) no employee hired during a lawful strike should be allowed to participate in such a petition or representation vote until a year after the commencement of that strike;

(4) the Canada Labour Relations Board should have discretion to determine the nature of the evidence relating to union loss of employee support, and the degree of confidentiality to be attached to that evidence;

(5) the Canada Labour Relations Board should have discretion to cancel the certificate of a union that fails to exercise the exclusive bargaining rights granted by the certificate (known colloquially as "sleeping on its rights");

(6) the law should recognize a right in an employee or group of employees to pursue decertification on the ground that the certificate was obtained by fraud; and

(7) the law should recognize a right in the employer to pursue decertification on the ground that the certificate was obtained by fraud or by the commission of an unfair labour practice or that the union is "sleeping on its rights", for the reason that the employer has an interest in not being a party to an inappropriate union bargaining certificate.

(5) Protection from Employer Unfair Labour Practices

467. Our recommendations respecting unfair labour practices generally relate to increasing the scope of prohibited acts and changing procedures for enforcement. We consider here the protection of unions, and in other sections the protection of individual employees and employers.

468. The term unfair labour practice as used in the statutes bears a different technical meaning in different statutes. We find it useful to give it the meaning of conduct, usually otherwise lawful, which is prohibited by statute because it is calculated to interfere with the free course of action considered fundamental to the functioning of collective bargaining. We single

out for special treatment elsewhere the questions of employer free speech and good faith bargaining and the subject of picketing and boycotting and enforcement of the law.

469. There are four stages in the collective bargaining process where unions require protection from employer unfair labour practices: at the time of union organization, during the period when an application for certification is being processed, during negotiations, and during the term of a collective agreement.

470. Under the present federal law, employers are barred from undue participation or interference in union affairs by prohibitions against participation and interference in the formation, administration and selection of a trade union and interference with union representation of employees, and by prohibition against contributing financial or other support. Employers are also prohibited from engaging in discrimination against a person in his employment or intimidating a person because of union activity. The qualification to this latter prohibition is that the employer's right to act for cause is preserved.

471. Explicit exceptions to prohibited activity include granting permission to union representatives to confer with the employer during working hours and to attend to union business during working hours without loss of pay, providing free transportation to union representatives, and granting the use of the employer's premises. The exceptions do not include some found in provincial statutes: employer contribution to welfare funds, and special organizational rights of union representatives where access to the place of business and hence to the work force is not possible or cannot easily be gained without illegal acts.

472. Prohibitions relating particularly to the stage where an application for certification is pending include the disqualification of an employer-influenced organization.

473. Prohibitions relating particularly to the period of negotiations include prohibition against changing terms or conditions of employment without the union's consent, failure to recognize or bargain with a certified union, and removal of pension rights or benefits from an employee during a strike or lockout or dismissal contrary to the Act. An employer is not explicitly prohibited from treating with a rival union that does not have bargaining rights.

474. No prohibition relates particularly to the period when a collective agreement is in operation; a prohibition found in some provincial jurisdictions is against refusal to confer with a union representative on company time over grievances.

475. We wish now to make recommendations for additions to the declarations of prohibited conduct. There may be advantage in giving to union organizers special privileges, including, where necessary, room and board at the same rates as those charged employees, where access to the work place and hence to employees is difficult or impossible except by the commission of acts of trespass. This problem is more applicable to enter-

prises under provincial jurisdiction, except as the federal law applies to the Yukon and the Northwest Territories. We recommend that right of access be obtained through an order of the Canada Labour Relations Board on application by an authorized union official. We recommend that the prohibition against changing terms and conditions of work be extended to the period during which an application for certification is pending, subject to waiver by the Canada Labour Relations Board. We recommend that it be made an unfair labour practice for an employer to negotiate and enter into a collective agreement with a trade union while another union is entitled to bargain. We recommend that contributions to welfare funds that are jointly administered by the employer and the union be specifically exempted from the prohibition against employer financial support to the union.

476. In respect of procedural matters, we recommend the elimination of the consent to prosecute provision and the transfer of jurisdiction over unfair labour practices from the Magistrates' Court to the Canada Labour Relations Board, as reconstituted according to later recommendations, with power in the Board to investigate and to seek accommodation through the use of field staff, to hear and determine unsettled issues, and to prescribe remedies including an order to do or cease doing some act, as well as an order of employee reinstatement and an order for compensatory damages. We recommend that Board orders be enforceable on the initiative of a party for whose benefit the order was made as an order of a superior court. We recommend further that the Board have exclusive jurisdiction in this field and that nothing made an unfair labour practice by legislation be the subject of a civil suit unless the conduct is unlawful irrespective of the fact that it is prohibited by statute.

477. We recommend also that an unfair labour practice complaint may be initiated by a party of interest or by a public enforcement officer, but that the complaint be subject to prosecution before the Canada Labour Relations Board by the public enforcement officer only, provided that where the officer declines to prosecute or to continue to prosecute, the aggrieved party may continue the proceedings. Where the aggrieved party takes or continues a case on his own and discontinues it before the charge is disposed of by the Board, the public enforcement officer should be free to prosecute the case to the point of disposition.

478. We recommend further that where any conduct is both an unfair labour practice and a breach of a collective agreement, the Canada Labour Relations Board have discretion to determine that arbitration under the collective agreement should preempt the jurisdiction of the Board.

479. We do not find a case for spelling out the onus of proof on management to show cause for what might otherwise be discriminatory action: the onus is there in any event, on the principle that a person who is best apprised of the facts should carry the burden of proving them and that an employer whose defence is that he dismissed or disciplined an employee for good reason should establish that reason.

480. We recommend that there be a limitation period of 60 days on unfair labour practice complaints, the time to run from when the aggrieved party knew, or in the opinion of the Board should have known, of the event that is the subject of the complaint.

(6) Union Security and the Check-off

481. An important ingredient in the Canadian collective bargaining system is that a union gains exclusive bargaining authority and with it the duty to represent all employees in the prescribed unit in the collective negotiation of terms and conditions of employment. These policies, in our view, give the union a claim to general support from employees in the unit in the union's capacity as their collective bargaining agent, whatever other functions it may perform as an instrument of social transformation.

482. This rationale supports the agency shop form of union security. Under this form of union security an employee in a unit for which a union is the bargaining agent must pay the regular and reasonable dues of the union, whether he takes out membership or not, as an "agency fee". Such a fee is for services rendered and responsibilities assumed by the union in the collective bargaining system imposed as a matter of national labour policy.

483. We recommend that the compulsory irrevocable check-off of regular and reasonable dues be available to a certified union as of right upon the negotiation of its initial collective agreement and thereafter, and that this right be extended to a union recognized voluntarily by the employer.

484. Forms of union security more advantageous to unions than the agency shop, such as the union shop and the closed shop, have been negotiated in a number of areas of the labour market and are condoned by the present law. It is not reasonable that they now be prohibited. Nevertheless, their existence creates a special public interest in ensuring that forms of union security more stringent on the individual than the agency shop are not used to the unwarranted prejudice of the individual. The form and degree of public intervention to secure civil rights of employees where they conflict with the interests of the union under both the agency shop and higher forms of union security are the subject of the next section.

(7) Union authority and worker civil rights

485. Trade unions originated as voluntary unincorporated associations of craftsmen who banded together to set rates at which they agreed to sell their services and secure job opportunities for their members. Today, many interests of trade unions are vested in the legal framework of collective bargaining, including monopoly bargaining rights. They can no longer claim the status of private associations whose internal affairs are solely their concern. They have become quasi-public bodies, if not public institutions, and the public has acquired an interest in their internal operations.

486. We note in Part Four that union abuse of power over their members is rare. Nonetheless, because of the possibility of abuses and the severity of their impact on individual rights, we make certain recommendations. There are four areas in which the individual is entitled to protection. The first relates to access to employment as it is affected by the operation of hiring halls, the regulation of standards of competency of job performance, and financial barriers to union membership. The second relates to the right to continuation in employment as that may be affected by continuing union membership. The third relates to the right to union membership to protect interests other than an interest in employment. The fourth relates to rights of "union citizenship".

487. We recommend that where a hiring hall operates in an industry as the effective avenue to employment in that industry, it should be operated by the Canada Manpower Service with the assistance and co-operation of the affected employers and union or unions through a joint labour-management advisory committee.

488. Where access to a particular trade, occupation or industry is contingent upon the attainment of certain minimum standards of competency in order to protect the public interest, we recommend the standards be set and administered by a tribunal in which there is public participation and from whose decision there is a right of appeal. In other words, licensing should be performed by some body other than a union, in order that this function, and waiting periods associated with it, may not be used as a device for controlling the intake of members. The fact that a union may consider it has good reason to close its membership rolls in the interests of the economic security of its present members, or for any other reason, is not in our view valid reason for denying a non-member a certificate of qualification in a trade to which he would otherwise have a claim. External control of competency ratings need not preclude the operation of the seniority rule in hiring halls.

489. Where professional bodies have exclusive licensing powers, a case may be made for public participation in the licensing function and for a right of appeal. These are appropriate matters for the study of the activities of self-employed professional groups which we recommend earlier.

490. In the previous section we recommend the adoption of the agency shop as the basic form of union security. Under the protections attached to the agency shop the individual has a right to continue in employment as long as he stands willing to pay regular and reasonable dues and allied assessments. Under both the agency shop and higher forms of union security, there must be protection for employees in respect of the size of these dues and assessments. We recommend that either a Public Review Board of the type we recommend shortly or the Canada Labour Relations Board be empowered to hear and determine a petition from an employee or person seeking employment that such dues and assessments are unreasonable. We also recommend that one or other of these tribunals have jurisdiction to determine the reasonableness of initiation fees as possible financial barriers to union membership

and thus to employment. The latter recommendation is more relevant to the union shop, the closed shop and other higher forms of union security than to the agency shop.

491. We recommend that legislation prescribe basic procedural rights in internal union affairs, including the right to be heard, to be tried by an impartial body, to be represented by counsel, to be protected against double jeopardy, to have access to a speedy trial and appeal, and to receive reasoned decision.

492. We recommend further that legislation guarantee to members the right to run for union office in elections held at regular intervals, to nominate candidates, to vote in union affairs, to attend and participate in union meetings, and to have equal access to union facilities, including the union newspaper, especially during election campaigns. We recommend further that legislation guarantee the right of union members to audited statements of union financial affairs and to possession of the union constitution, and the right of all employees in the bargaining unit to possession of any collective agreement affecting their employment.

493. Where a person's union membership is to be suspended or terminated by the union against the will of the member, we recommend that the constitution of the union provide machinery for appeal and review. The culmination of this appeal and review procedure should be a Public Review Board constituted in such a way that a decisive voice lies with persons drawn from outside the labour movement. We recommend that groups of unions, through such bodies as the Canadian Labour Congress and the Confederation of National Trade Unions, set up common boards for their affiliated organizations. The composition of such boards should be subject to the approval of the Canada Labour Relations Board. Alternatively, the individual should have a right of appeal to the Board for a review of procedures and for a review of the reasonableness of the substantive rules of the union relating to termination of membership. Rules should not be such as to preclude union members from engaging in otherwise lawful conduct unless that conduct seriously undermines the union's position as a bargaining agent. Thus, for example, dual unionism would not be a legitimate cause for union discipline, especially where one union cannot supply a worker with regular employment opportunities, unless a member is actively engaged in trying to supplant one union by another.

494. Under forms of union security more advantageous to unions than the agency shop, a union member's access to employment or continuing employment should not be jeopardized because of any loss of union membership until he has exhausted the appeal procedures. In the interim he could be suspended from the union but still be compelled to pay dues and assessments, and still be entitled to fair representation by the union as we define it later.

495. To avoid short-circuiting internal union appeal procedures, a member should be denied access to either a Public Review Board or the

Canada Labour Relations Board until he has exhausted internal procedures, unless he can show that the resulting costs or delay will cause undue hardship. In determining whether such hardship would ensue, it would be relevant for the Public Review Board or the Canada Labour Relations Board to consider the fact that under our previous recommendation no person would lose his job for reasons other than non-payment of dues and assessments until he has exhausted appeal procedures.

496. We recommend further that either the Public Review Board or the Canada Labour Relations Board be empowered to review, in the manner of the Ontario legislation, union trusteeships where a parent union must notify the Ontario Labour Relations Board of a trusteeship over a subordinate unit and of the terms of the trusteeship as required by that Board, and a twelve month limitation period is placed on trusteeships without the consent of the Board.

497. In respect of industrial relations, we recommend that legislation guarantee a duty of fair representation, particularly in the handling of rights acquired under a collective agreement. We recommend that a member who is of the view that he has been denied fair representation have an appeal to the Public Review Board or, in the absence of such a board, to the Canada Labour Relations Board, and that a burden be placed on the union to establish that it considered the rights and interests of the individual and that it acted in good faith and in the interests of the bargaining unit as a whole.

498. A special onus of fair representation arises where two bargaining units are merged into a single unit. We recommend that the Canadian Labour Relations Board be empowered to review any arrangements made to resolve competing claims to seniority within the emergent unit upon the application of the bargaining agent in either of the predecessor units.

499. We recommend that there be no appeal on the merits in any of these areas from decisions made by either the Public Review Board or the Canada Labour Relations Board. The question of appeal and review is considered at greater length later in this Report.

(8) Ratification Votes and Strike Votes

500. The constitution or by-laws of many unions require that the terms of any agreement negotiated by a union committee be referred to the membership for ratification before it is binding on the members. Other unions continue to empower their bargaining committees to consummate an agreement without reference to the membership who, if they are not satisfied with the outcome, retain the right to change their representatives on such committees before the next negotiations. Between these extremes are unions that delegate limited authority to their bargaining committees, sometimes with the effect of inhibiting the bargaining process by tying the hands of the negotiators. This latter procedure can become effectively the same as ratification but is patently more cumbersome.

501. Although a review by the Task Force did not show that there is a high incidence of settlement rejections by union members, a number of such rejections have occurred in major disputes. The effect has been to frustrate effective bargaining and to make the whole process more prone to conflict. Although limited, the concern over rejection is undermining confidence in collective bargaining itself, and is causing questioning of the roles of union leadership, the nature of union office, and inevitably the reliability of undertakings given by persons at the bargaining table. The precedent set by employers who find something more after a tentative agreement is rejected by the membership is not conducive to ratification in the future. It may well be impossible in any given case to sort out what is cause and what is effect; in such circumstances collective bargaining becomes a game of "Russian roulette": the chamber that comes up on the spin may well be loaded with a strike.

502. There is no question that employers, unions, employees and the government as custodian of the public interest all have an interest in the issue of ratification votes. Nevertheless, in our view the question of ratification votes is primarily the business of unions. The problem presented by the tactical element is not one that is amenable to legislation. Were it so, we would have given more weight to the view that ratification votes should be banned. The element that is susceptible to control is the form that the ratification vote takes. The public interest in the system of collective bargaining justifies regulation to ensure a vote that fairly represents the judgment of the constituents. We therefore recommend that where a ratification vote is taken, it be by secret ballot and that the constituents have maximum access to the ballot.

503. To these ends we recommend that the ballot be taken at the entrance to the work place or work places or by mail, that steps be taken to ensure the secrecy of the ballot, and that the employer's right to put his views to the electorate be preserved. Knowledgeable mediators and conciliators can play a useful function in advising the parties on the timing and form of ratification votes.

504. We do not recommend a blanket form of supervision, nor do we recommend specific intervention in the decision of the union as bargaining agent as to who should be enfranchised, beyond recommending that the constituency be limited to union members in the unit to which the terms of the offer would apply. It would be disruptive to the internal activities of the union if its concessions and decisions relating to negotiating an agreement were to be subject to change by a group of non-members. Although we recommend that non-union employees in the bargaining unit be required to pay an agency fee to the union representing the unit, they should be prepared to join the union if they wish to participate in its decisions. We do not recommend that ratification votes be mandatory.

505. Strike votes are compulsory in some jurisdictions in Canada and are frequently taken voluntarily by unions in others. As in the case of

ratification votes, we do not recommend that such votes be made mandatory. Nevertheless, we recognize that strike votes present many problems similar to those relating to ratification votes. For much the same reasons we do not consider that strike votes should be viewed solely as the business of the union. Again, therefore, we recommend regulation of the form of the vote to ensure the secrecy of the ballot, maximum access to the ballot, and a fair opportunity for the employer to make his case known to the voters. We recommend also that a union be barred from acting on a strike vote unless it is taken after the right to strike has been acquired. A vote prior to that time, whatever it is called, should not be regarded as authority in law to declare a strike if such authority should be required by the union's constitution or by-laws or otherwise.

506. In making these recommendations with respect to strike votes, we recognize the difficulty they present in terms of the desire we express later to free the parties to take direct action, that is, to strike or lock out, as of the termination date of the existing agreement. In some cases a strike vote in accordance with our recommendations could delay the exercise of the right to strike by a number of weeks. We do not believe this to be an intolerable delay, particularly in light of the fact that we do not recommend a mandatory strike vote.

(9) Union Accountability

507. The legal personality of unions is a subject on which feelings tend to run high. Those who must deal with unions want to be able to hold them accountable within the scheme of collective bargaining; unions are apprehensive of accountability under the law lest such liability be used to impair their role or effectiveness in collective bargaining and in other activities vital to their interests.

508. At present there is wide variation in the legal status of unions across Canada. In some jurisdictions they are legal personalities for limited purposes; in other jurisdictions they are legal personalities for all purposes; and their status under the federal statute is unsatisfactory inasmuch as they are declared accountable for certain purposes and it is left to inference as to whether they are accountable otherwise.

509. In our view unions should have a legal status that is commensurate with their status in collective bargaining. It should be made clear what it is that unions should be accountable for, to whom they should be accountable, and by what procedures they should be accountable.

510. We recommend that unions should be accountable

(1) to union members before a Public Review Board or the Canada Labour Relations Board generally in respect of internal affairs of unions and their duty of fair representation;

(2) to employers before the Canada Labour Relations Board for illegal work stoppages, provided that liability be limited to cases in which

local and higher level union officers fail to demonstrate that they did all they reasonably could to prevent the work stoppage or to persuade the defaulting employees to return to work;

(3) to employers and employees before the Canada Labour Relations Board for matters declared to be union unfair labour practices;

(4) to persons injured by violation of the picketing and boycotting code before the Canada Labour Relations Board or for violation of the general law respecting the form of picketing in courts of law;

(5) to employers in grievance disputes processed to arbitration during the term of a collective agreement or during the period in which grievance procedures are operative;

(6) generally for the conduct of union officers before the Canada Labour Relations Board in matters assigned to the jurisdiction of the Board and in courts of law under the general law of responsibility for agents and employees;

(7) to union members in courts of law for accountability for funds;

(8) to union members for the vesting and funding of union-administered pension plans to the same extent as is required of employer-administered plans under the law; and

(9) generally for the conduct of union members in courts of law under the general law of vicarious responsibility.

511. We recommend that the liability of unions be limited to their assets and should not extend to those of their members. This limitation is analagous to the concept of limited liability in the corporate sphere.

512. We recognize that union responsibility for its members' behaviour can be no greater than its power to control that behaviour. Although we earlier recommend a number of steps to protect the civil rights of persons within their unions, we do not intend that these safeguards should in any way proscribe a union from taking effective disciplinary action against those who expose it to legal liability.

(10) Trade Unions and Political Action

513. Historically the labour movement has always been active in politics. Individual unions have differing degrees of involvement, depending largely on their ideological orientation and the extent to which they are affected by government policies. Union political action may range from lobbying, through the approach of rewarding one's friends and punishing one's enemies, to the support of a particular political party. Because of the caucus system, the latter is more likely under a parliamentary than under a congressional system of government.

514. Today in Canada unions tend to involve themselves in the political life of the country for one or more of three reasons. The most common

relates to a desire of the labour movement to improve the statutory and administrative framework of rules and regulations within which it must operate. Beyond this, many unions are interested in the pursuit of legislative goals which will complement and supplement their gains at the bargaining table. Among these objectives are more generous social security arrangements and the vesting and funding of privately negotiated fringe benefits, particularly in the pension field. A large number of unions seek the implementation of more radical social reforms through economic and social planning. Such unions view themselves as instruments of social transformation as well as agents for collective bargaining.

515. Many unions taking an active part in politics do so through their support of a particular political party. To this end many unions donate a portion of their members' dues to the party. The amount per worker may be small; the amount in total may be large. In any case, some workers object to any of their dues being so allocated. Because of such objection, many unions provide that their members may opt out of this obligation, in which event an equivalent sum sometimes is given to charity.

516. We appreciate the lengths to which many unions have gone to protect the interests of dissenting members in this area. Nevertheless, this accommodation does not obviate the need for a public policy with respect to the use of union funds for political purposes. Such a policy is essential in view of our recommendation that a union should automatically be afforded the agency shop or universal compulsory check-off of dues upon negotiating a first and all successive agreements. Unions have legitimate reasons for participating fully in the country's political life. Our only concern is to protect union members who may hold divergent views. With this in mind we are attracted by the British approach to the problem.

517. Britain makes three requirements of unions that wish to donate any of their regular dues and assessments to the support of a political party. First, such a decision must be made or ratified by a duly constituted representative body of the union. Second, all such monies must be kept and accounted for separately. Third, dissenting members must be permitted to opt out of such a contribution. We would add two features, in order to protect the anonymity of dissenting members who may wish to avoid any possibility of retaliation. Such members should be able to opt out either by notifying the union or by stating their desire to do so in a signed letter to the Canada Labour Relations Board. The Board would, if necessary, check the authenticity of the request against the employer's personnel records and inform the union of the number of members opting out. The union would then be obliged to revert these members' shares of the union's political contributions to its general operating fund.

518. As cumbersome as this set of procedures may seem, we consider them to be in order to protect the legitimate interests of both unions and their individual members, at least until a more satisfactory way is found to

finance political parties than that which now exists in this country. There is no case for placing any more stringent constraints upon unions in this area unless other institutions are brought under similar controls.

(11) Inter-union Rivalry

519. Conflict within the labour movement is as old as the movement itself. It tends to take three main forms. One relates to ideological rivalry and reflects the fact that trade unionism is part of the political spectrum. A second relates to rivalry over securing the right to exclusive representation. This type of conflict is an accepted fact within the Canadian industrial relations system, and the legal framework of collective bargaining regulates it. A third form relates to conflict over securing jobs for union members, that is, rivalry over jurisdiction or work assignments. In most cases persons outside the labour movement who are hurt by such disputes are powerless to protect themselves.

520. Inter-union ideological conflict sometimes takes regrettable forms, yet it is inevitable, and is not amenable to legislative control except insofar as it is reflected in other types of rivalry.

521. As for representational and jurisdictional rivalry, both public and private measures are required. In the case of representational conflict, the present provisions in the law with respect to certification, decertification and replacement of one union by another are adequate. In addition, we commend and encourage the efforts of unions to solve this problem themselves. As noted in Part Four, particular mention should be made of the Canadian Labour Congress' internal no-raiding pact and the continuing efforts between the Congress, the Quebec Federation of Labour and the Confederation of National Trade Unions to work out ground rules to avoid the disruptive effects of conflict between their affiliates in Quebec.

522. Jurisdiction or work assignment disputes poses an especially challenging problem in the construction industry, where the parties have made efforts to solve the problem at various levels. There is at the international level the National Joint Board for the Settlement of Jurisdictional Disputes located in Washington, D.C. Effective local committees have been created in some instances, as in Montreal under the Construction Parity Committee system. We urge the creation of similar committees, particularly at the provincial level in all jurisdictions in Canada. Nevertheless, in our view it is no longer acceptable to leave these disputes to be determined solely by self-policing action within the labour movement. It must be supported by government regulation. We therefore recommend that in the first instance parties to jurisdictional disputes be at liberty to work out their own procedures for settlement without injury to others, and that in the second instance any interested party be at liberty to ask the Canada Labour Relations Board to prescribe and administer procedures and to impose them where voluntary ones break down.

523. We wish to make it clear that we would have this procedure apply not only to inter-craft union disputes but also to the growing problem of conflict between craft and industrial unions such as in relation to prefabrication and installation in the construction industry.

(12) Structure of the Labour Movement

524. The structure of the labour movement is discussed at length in Part Four where observations are offered with respect to such matters as the number of unions in Canada, the role of bodies like the Building and Construction Trades Department of the AFL-CIO in this country, and the degree of autonomy enjoyed by the Canadian members of international unions.

525. We note the continuing concern about these matters within the labour movement and urge organized labour to continue its efforts to improve the situation.

526. We do not consider that these areas would benefit from direct statutory intervention, and consequently make no recommendations for legislative amendment. Indirectly, however, some of our recommendations will have an impact on these matters. Our proposals with respect to the determination and redetermination of bargaining units and with respect to the handling of inter-union rivalry in the form of jurisdiction or work-assignment disputes could have a significant bearing on the structure of the labour movement.

(13) Union Approaches and Policies

527. In Part Four we make two major observations about the general approaches and policies of the Canadian labour movement. Neither lends itself to remedial statutory action. First, we emphasize the need for organized labour more effectively to reconcile its relatively selfish pursuits at the bargaining table with its highly socially conscious pronouncements on a host of public issues. Second, we would encourage trade unions which have been playing a major part in meeting the country's bilingual and bicultural challenge to continue to do so, and other unions to take up the challenge.

528. Several other observations are in order. In our view, industrial relations would be well served if unions were to avoid the creation of false expectations in the minds of their members by making exaggerated claims and demands. Similarly, it would be useful if unions were to repose more decision making powers in the hands of their negotiating committees. On a different plane we would urge unions to expand their education and training programs, both for their officers and staff and for their members. More effective use and greater recognition should also be given the work of their professional advisers. Finally, in concert with management, unions should give more consideration to the nature of work itself and to concepts such as job enlargement designed to make work more satisfying.

MANAGEMENT RIGHTS AND RESPONSIBILITIES

(1) Freedom of Speech for Management

529. Freedom of speech for management ought to be recognized as a general right; any infringement thereon should be justified in specific terms. There is one circumstance in which restriction is justified: where union representation is in issue. An employer who opposes certification of a union should be limited to defending his record as employer through the statement of facts, and to rebutting union allegations and promises, without threat or promise of future action. In other circumstances we see no case for restraining free speech beyond prohibiting threats of unlawful consequences.

(2) Freedom to Associate and to Act Collectively

A. EMPLOYER ASSOCIATIONS

530. All labour relations acts in Canada state that employers are as free as workers to join together for collective bargaining. In principle there is much to be said for equivalent treatment. Of more practical significance, however, is the need to recognize that just as employer market power often necessitates the countervailing force of a union, so may the strength of a union or group of unions require an offsetting employer alliance. This need is particularly apparent where a number of relatively small employers find themselves confronted by a common union or council of unions, as in trucking and longshoring in the federal jurisdiction and in construction and printing in the provincial jurisdiction.

531. Although employers who find themselves in such a position are permitted under the existing legislation to form associations for the purpose of dealing with unions, there is nothing comparable to the elaborate certification procedure for unions to protect employers in the exercise of parallel rights. A case has been made for remedying this imbalance in a recent study prepared under the auspices of the Canadian Construction Association's Canadian Inquiry on Construction Labour Relations.[4] We support the conclusion in that study and recommend that an accreditation system of an employer association along the lines of existing union certification procedures, be made available on a trial basis in trucking, longshoring, and any other federal industry where the Canada Labour Relations Board considers it appropriate.

Although the implementation of such a scheme poses many administrative problems, we do not believe any of them to be insurmountable.[5] In making this recommendation we wish to stress a number of points.

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[4] H. W. Arthurs and John H. G. Crispo, "Countervailing Employer Power: Accreditation of Contractor Associations", H. Carl Goldenberg and John H. G. Crispo (eds.) *Construction Labour Relations,* (Ottawa, Canadian Construction Association, 1968).

[5] See *ibid.* for a review of these problems and for ways in which they could be overcome.

First, once accredited, an employer association would be granted exclusive bargaining rights for all the firms within the appropriate bargaining unit. Second, it should be made clear that any employer association accreditation plan would apply only to unionized firms dealing with the same union or group of unions. Third, consistent with what we have said about union security, we would grant an association this security in the form of an automatic employer-association-agency shop after the negotiation of its first collective agreement, unless the association were able to negotiate a more stringent form of security with the union or unions involved.

Under an employer-association-agency shop, the association could levy reasonable dues, including an assessment for strike insurance, against all employers included in the appropriate unit but could not compel an individual employer to belong to the association or to abide by its constitution and by-laws. This limitation would lessen an association's ability to compel an employer to take a collective strike; it might have to entice the employer to do so by offering generous strike insurance. We discuss this in the following section.

A more stringent form of employer association security might give the association more power over its individual members, but the price should be greater public scrutiny over its internal affairs, as in the case of unions operating under a form of union security higher than the agency shop. At the least, legislation should ensure freedom of access to such associations to lessen the possibility of anti-competitive practices in restraint of trade.

B. COLLECTIVE LOCKOUTS AND STRIKE INSURANCE

532. Where a group of independent enterprises are engaged in common bargaining, as not infrequently happens within an industry in which there is a common union, employers are obliged to consider what action they should take if the union should strike one of their group. The most common but infrequently used collective response is for the employers who have not been struck to lock out their employees, in order to maintain the industry wide nature of the bargaining and to preserve both their composite economic strength *vis-à-vis* the union and their common position in respect of terms of settlement. This joint response to the sanction of the strike is permissible under the present law, provided the statutory right to lock out in other operations coincides with the union's right to strike the particular enterprise.

533. Growing consideration is being given to inter-enterprise schemes whereby other employers continue in operation but provide the struck employer with protection against loss of profits. Such a scheme is sometimes referred to as strike insurance, and may come from a funded source or from assessments made on members. As we read the present federal law such a scheme is permissible.

534. We agree with the present state of the law in both respects and make no recommendations for change.

(3) Wider Employer Alliances

535. In an earlier part of this Report we stress the benefits to be derived from the formation of a federation of employer associations at the national level to represent management's general interests in industrial relations. This is not a matter that lends itself to statutory encouragement, but it is an essential step which management should be encouraged to take by every means possible. Informally, major employer groups already work closely together on their activities in relation to the International Labour Organisation and the Organisation for Economic Co-operation and Development. Their efforts in these areas could be made more formal and serve as a basis for more co-operative endeavours in a much wider range of activities. Although a similar need exists on the union side, it is not as acute because there are only two major union groups.

(4) Protection from Union Unfair Labour Practices

536. The present Act protects the employer from illegal strikes, places limits on where and when a union may recruit members, and obliges a recognized union to bargain. The Act does not protect employers from union interference in the formation and operation of employer associations, nor does it include restricting or limiting production or services as a form of strike action. We recommend that the first be declared an unfair labour practice and the second also be so declared except where a union has gained the right to strike.

537. We make recommendations later respecting stoppages over organization and recognition, and over grievance and job allocation disputes.

(5) Management Approaches and Practices

538. Extensive comments are made in Part Four on management approaches to and practices in industrial relations. We wish here only to make a few observations.

539. We suggest that there is a continuing need in Canada for a wider acceptance by employers of collective bargaining as public policy and of the legitimate role of trade unions in this process. We do not wish to imply that there is a pervasive lack of acceptance of public policy. Moreover, anti-unionism is not simply a rejection of public policy in pursuit of the preservation of entrepreneurial freedom as epitomized in the doctrine of *laissez-faire*. There appears to be a relationship between anti-unionism and economic marginality, depressed terms of employment, high utilization of unskilled labour, high labour turnover, and the use of tactics such as the labour injunction. Where this interrelationship exists, it must be broken if sound labour relations are to emerge.

540. In what has become in many instances an impersonalized and routinized industrial environment, there is continuing need not only for fair

wages and working conditions to protect the interest and welfare of individual employees but also for greater measures of job or income security and work satisfaction. In both these areas, and to meet the challenge of providing workers with a more meaningful voice in industry, collective bargaining is an obvious and important instrument. Employers must do more, through their employees' representatives, to reduce employee apprehension about change by providing adequate advance notice and adjustment facilities, either in conjunction with public programs or on their own. In addition, management may eventually find collective bargaining an effective means by which to explore opportunities to make work more meaningful and interesting. This itself would amount to a significant step in the direction of greater worker participation in industry. More advanced and productive forms of employee involvement could result from some of the sophisticated adaptations of collective bargaining to which we refer below.

541. Management's handling of collective bargaining would benefit greatly in many industries if employers drew on more expert industrial relations staff and were guided by their advice. The first requirement is borne out by the experiences of the longshoring, shipping and construction industries, where lack of sufficient personnel with expertise in industrial relations has been a source of much of the labour relations difficulty in those industries. Another dimension of this problem is found at all levels of management in Quebec, where failure to conduct labour relations in the language of the employees affected has often seriously complicated industrial relations. The second requirement is more general and reflects the inevitable tendency to downgrade the advice of specialists in any area of management when that advice conflicts with a constellation of other internal pressures.

542. In this context, we note particularly the need for employers to take a long range view of industrial relations and of terms of settlement for particular collective agreements. We comment earlier on difficulties surrounding the rejection of negotiated terms through ratification vote procedures, and noted the element contributed by the employer who managed to discover that his last offer was not his final one. We noted the consequence of undermining management credibility and union leadership and employer unity. We recognize also that an employer may from time to time be under severe pressure, not only from his employees but from his customers or business associates. The construction industry is particularly vulnerable to this pincers syndrome in industrial relations. Management should give more weight to the long-run effects of some of its decisions and should review its policies accordingly.

543. Employers often fail to take advantage of their rights under the present law to seek remedies for allegedly unlawful union activities. We were impressed with the frequency and intensity with which management demanded public enforcement of the law. We make recommendations on this matter elsewhere in the Report, not to do for management what it is not willing to

do for itself, but for the public interest in the enforcement of the law to which management itself must be expected to defer as part of the price of public enforcement.

THE COLLECTIVE BARGAINING PROCESS

(1) The Good Faith Requirement

544. Collective bargaining works more effectively and yields more satisfying results when both sides to the negotiations act in good faith. This applies both to the negotiation of an agreement and to its administration. Where one party does not act in good faith, the disease is usually contagious. A sign of bad faith by one side is likely to make the other suspicious, and to weaken the possibilities for meaningful accommodations both before and during the life of a collective agreement.

545. The issue of bargaining in good faith relates not just to employer unfair labour practices; unions have bargaining strategies, tactics and intransigencies of their own against which employers would like protection. Laws vary across Canada, some statutes asserting a duty in the parties to bargain in good faith, others a duty to make every reasonable effort to reach an agreement. The standard of good faith is not the same as the standard of reasonableness, although unreasonableness may be regarded as evidence of bad faith.

546. The federal law in the United States has developed an elaborate jurisprudence on the issue of good faith bargaining, revolving largely around what subjects must be bargained, what may be bargained and what a party cannot insist be bargained. The issues in the United States also relate to tactical matters, notoriously the employer "this is it, take it or leave it" tactic known as Boulwareism. The issue of good faith bargaining falls within the jurisdiction of the National Labor Relations Board and its field services.

547. We do not think it is useful to industrial relations in Canada to put the issue of good faith bargaining into such an elaborate jurisprudential container. The duty to bargain is not a duty to agree; nor does the right to bargain grant a right to a particular bargain. We see no reason why the subject matter of bargaining should not include anything that is not contrary to law. As to tactics, the highest duty that should reasonably be placed on either party to a bargaining situation, in which each has a claim to preserve its freedom respecting its bargaining position, is to state its position on matters put in issue. But we cannot envisage such a duty being amenable to legal enforcement, except perhaps to the extent of an obligation to meet and exchange positions. We wish to make it clear that we do not condone minimal adherence to the standards of good faith bargaining. Our concern is to avoid writing into the law standards that are unenforceable or that could encourage either minimum bargaining or litigation.

548. We are reinforced in this position because the conciliation officer plays a required role in seeking to bring about agreement in the present

industrial relations system. He would continue to have an important role in the system as amended according to our recommendations respecting state intervention in negotiations.

(2) Structure of Collective Bargaining

549. Reference is made elsewhere in this Part to the desirability of facilitating the structuring of bargaining units to allow industrial relationships to seek their own level. Also referred to is the role of the Canada Labour Relations Board in the exercise of its power to review its decisions to act as the main agent of facilitation, either on its own motion or on the initiative of a party of interest, after public hearings based on an examination of the industry.

550. We favour, then, the general principle of freedom for the bargaining structure to find its own form, subject to the exercise of influence by the state where the public interest is high. We note in another section the impact of unit determination on the likelihood of unionization, on the balance of the employer-union power relationship, and on the effective scope of the contents of the collective agreement. The parties, therefore, have much to contend for in the unregimented determination of the bargaining structure. Present legislation, especially in the provincial jurisdiction, tends to balkanize collective bargaining, often to the advantage of a particular party of interest: a craft union, a large employer, an employer governed by a project certificate, or occasionally a union that would not be able to organize employees on a larger scale.

551. In restructuring bargaining units we recommend that the Canada Labour Relations Board have power to join existing units in one certificate, to order joint bargaining where more than two unions or two employers are involved, and to take other steps it considers appropriate to bring the legal determination of units into line with a natural determination of the bargaining structure.

552. As noted above, the choices of form which the unit may take are numerous. We record them not to indicate favourites but to suggest the scope for this discretion in seeking the policy of "freeing" unit determinations both before and after original certifications. The choices include craft units, plant units, multi-plant, multi-employer and multi-union units, industry-wide units, regional units, national units, different units for different purposes, and units created through federal-provincial co-operation.

(3) The Locus of Decision Making

553. We wish to note problems connected with centralization and decentralization of the collective bargaining process. An important consequence of centralization is absentee decision making; considerable care must be taken to guard against the situation in which participants to the collective bargaining process are mere message bearers and position staters for persons removed from the places where agreements are implemented. At the other

extreme, if collective bargaining becomes over-departmentalized, differences may arise that do not reflect any substantial disparity of circumstance and which could become an unnecessary source of dissatisfaction or an irritation in industrial relations. An appropriate balance must be struck between these competing claims, a challenge that remains to be overcome in many instances.

554. One of the factors of growing rank and file restiveness may be the upward movement of the locus of decisions in large organizations. A Task Force study[6] shows that there is a significant correlation between the remoteness of decision making and labour-management conflict: that is, the further away from the workers a decision is taken, the greater the possibility of conflict. Such remoteness may result from the role played by employer associations, from the employment of consultants, or from the internal workings of either unions or employers as, for example, in the case of foreign based corporations and unions. However remote the final decision making apparatus may be, every effort should be made to involve those affected by the decisions. We note that, in the construction industry in particular, there exists a practice of negotiating agreements intended to apply at various levels, for example, at the national or international level or on a project basis, in advance of a build-up of the labour force and not infrequently before any employees are at the job site. We recognize the advantage to both parties in being able to determine their respective responsibilities in advance of the commencement of a project; we observe at the same time the disadvantage that the agreement may fail to take into consideration local needs and the wishes of the local labour force in respect of union representation, and the possibility that the agreement represents a "sweetheart" arrangement. This latter problem we consider elsewhere.

555. At the plant level, beneficial effects might result from encouraging greater decision making by shop stewards and foremen in the grievance procedure. For example, a distinction could be made between decisions taken without prejudice to later reconsideration, that is, those that cannot be cited as precedents in arbitration, and decisions intended to become precedents. In this and other ways the growing demand for local autonomy could be met without jeopardizing the overall framework of relations within which they must inevitably function.

(4) Schedule and Duration of Negotiations

556. Delays in the negotiating process often have adverse effects on collective bargaining: the longer the period of negotiations, especially after an agreement has expired, the more frustrated the parties, including rank and file members, are likely to become. Yet the increase in the number of issues—often more complex issues—are demanding more time to negotiate.

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[6] See J. J. Wettlaufer, G. Forsyth and A. Mikalachki, *Management's Views of Union-Management Relations at the Local Level*, Task Force Study.

557. We recommend that the law be amended to permit the parties to strike or lock out on the termination date of the collective agreement, except where special procedures are invoked because of a potential threat to the public interest. This recommendation would not prevent the parties themselves from entering into procedural agreements to extend the restraint on the strike or lockout for a period after the termination date of the expiring agreement. In this event, terms and conditions of employment should continue for the period of the extension.

558. Bargaining would commence as soon before the expiry date as one of the parties gave notice to bargain, but in any event there must be a minimum period of 60 days given to the conciliation service. In the absence of such notice, the right to strike or lock out at the termination date would be lost and would not be regained until the passage of the 60 days' notice.

(5) Duration of Agreements

559. The question of the duration of the collective agreement sets the goal of stability in industrial relations against the risk of obsolesence in the terms of accommodation. Long term contracts tend to aggravate problems in a number of ways. Grievances may accumulate and go unsettled. Favourable settlements negotiated elsewhere during the long term may lead to such high demands that open conflict becomes unavoidable. Furthermore, pressures may tend to produce high settlements that may be justified in the particular case but not in others where attempts may be made to use the settlement as a precedent.

560. We can see no legislative solution to the dilemma posed by longer term agreements. We therefore urge both labour and management to weigh carefully the advantages and disadvantages. On their own or with government assistance, the parties should also be encouraged to explore procedures which, during the term of an agreement, might serve to reduce problems in renegotiation. Some such procedures are suggested in the next section.

(6) Continuous Bargaining, Experimental Clauses and Agreement Adjustment

561. We wish to comment in this section on three variants which could free collective bargaining and collective agreements from certain restraining routines that have developed or are prescribed under present collective bargaining legislation.

562. Because agreements have a fixed term for which legislation provides a minimum duration, and because the statutes prescribe periods toward the end of the term in which negotiations can be forced by one of the parties, there has grown a custom not to negotiate except during the prescribed period. We recommend that parties consider the wisdom of regular negotiations throughout the term of the collective agreement so that deliberations

are not restricted to times when pressures for settlement and apprehension of economic sanctions will produce unhappy compromises and, perhaps more important, the oversight of issues that do not have critical priority. Arbitration procedures are referred to later as one such subject.

563. Second, in keeping with the above spirit, the parties might consider experimental clauses applicable for a specified period or applicable only in certain plants and areas. Limited application might make such experiments more appealing by reducing the risks attendant upon them. If experimentation is to last for less than the statutory minimum period of 12 months, it may be necessary to modify the statute to allow for it.

564. Third, agreements might be made more flexible by providing for changing or setting aside clauses for certain periods in order to meet unusual conditions. If rights of individuals prejudiced by the change were subject to review by a Public Review Board or the Canada Labour Relations Board, an avenue of protection for the individual would be established and the parties could move away from a contractural concept of the collective agreement toward an administrative concept.

(7) Form, Distribution and Language of the Collective Agreement

565. We agree with the present requirement that a collective agreement, by definition, be in writing. We recommend earlier that a collective agreement be made available to employees in the bargaining unit. We also recommend that either party may demand that the collective agreement be produced in both English and French where there are English-speaking and French-speaking employees in the bargaining unit or involved in the administration of the agreement.

THE PUBLIC INTEREST IN INDUSTRIAL CONFLICT

(1) The Place and Dynamics of Industrial Conflict

566. It is basic to this Report that we view the role of collective bargaining within the industrial relations system as the most acceptable form for resolving conflict between enterprise and labour in our political economy. The mixture of conflict and interdependence inherent in the collective bargaining process has inspired the description "antagonistic co-operation". Neither ingredient, of antagonism or of co-operation, is entirely absent from the relationship, although they may alternate in their dominance and subservience. The strike and lockout are part of that system and we accept them as such. They are sanctions, but are often more: a work stoppage can make a positive contribution to harmonizing industrial relations. Because conflict may have a pathological side and because it should not be inevitable or habitual, we seek in this section to make recommendations for its containment in the interest of labour and management and of the public.

(2) Reducing the Incidence of Industrial Conflict

A. THE ROLE OF CONCILIATION AND MEDIATION

567. The Canadian system of collective bargaining throughout most of this century and in most jurisdictions has been built on a policy of third party intervention in industrial conflict, coupled with delay in the right to strike and lock out, in the cause of the public interest. Intervention at present takes a number of forms. The one of highest incidence is that of the conciliation officer, a Canada Department of Labour staff member. The second, except in Quebec, is the *ad hoc* conciliation board whose function, the time limits on whose function, and whose availability varies considerably across the country today. The third involves higher level government intervention, more often than not by a chief conciliation officer or deputy minister, and sometimes by a minister or even the Prime Minister. The fourth is the special commission of inquiry, whose terms of reference can vary considerably. The fifth is private mediation, a form rarely used.

568. The policy which we recommend be followed is one of pulling back on state-imposed intervention in the ordinary case and the encouragement of voluntary schemes, with a reserve power in the state in the event that the public interest is threatened.

569. We recommend earlier, as a preliminary to the implementation of this policy, that the right to strike or to lock out be acquired on the termination date of the collective agreement unless the parties agree to the contrary or special procedures are invoked because of a potential threat to the public interest.

570. We now recommend that the services of a conciliation officer be imposed on the parties before they are permitted to engage in direct action in the form of a strike or lockout. We considered recommending only voluntary conciliation, except in first agreements, but rejected this idea for essentially four reasons. First, the settlement record of conciliation officers is quite good, especially in relatively small bargaining units. Second, under a system of voluntary conciliation, a request by one party for the services of a conciliation officer might be interpreted as a mark of weakness. As a result, the services of a conciliation officer might be passed by when in the interests of all he should be present; or one party might seek to bring pressure to bear on the Canada Department of Labour to act on its own motion to encourage both parties to accept a conciliation officer to relieve that party of apparent responsibility. Third, one of the reasons why we recommend against elaboration of the standard of good faith bargaining is that in our system of collective bargaining the function of the conciliation officer appears to do much to relieve industrial relations distress caused by failure to bargain in good faith. Fourth, if our next recommendation to cut back on the availability of conciliation boards is accepted, the role of the conciliation officer is considerably strengthened. It would be unfortunate if his function, now augmented in importance, were by-passed because of the industrial relations tactics of the parties.

571. Once involved, a conciliation officer would have a legal right to stay with the case until the settlement of a new agreement or until both parties requested termination of the intervention.

572. We recommend that the secondary stage of intervention marked by the conciliation board be retained, but that such a board be appointed only at the request of both parties. We further recommend that the conciliation board have discretion whether or not it reports recommendations on substantive issues in dispute.

573. We recommend that at all stages of conciliation emphasis be placed on accommodation as distinct from the imposition of normative standards.[7]

574. We recommend the consideration of increased use of special mediation or the industrial inquiry commission as a substitute for or in addition to conciliation, with wide flexibility respecting terms of reference, procedures and functions.

B. POTENTIAL EMERGENCY DISPUTES[8]

575. Having endorsed the collective bargaining process, including the right to strike and lock out, as the system most compatible with a mixed enterprise economy operating in a pluralistic society based on liberal democratic values, we now concern ourselves with the issue of protecting the public interest where the collective bargaining process so operates as to create intolerable public hardship.

576. The public interest in collective bargaining has three competing ingredients. First, the public has an interest in the system of collective bargaining as an instrument for the pursuit of social and economic justice and progress in an industrial society. This is the interest that attracts basic endorsation of the system. Second, the public has an interest in the results of collective bargaining as they affect the distribution of resources in the labour market and as those results relate to and are reconciled with a host of other competing policies. This latter interest is the subject of extensive comment in Part Three and a specific recommendation later in this Part. Third, even though the right of recourse to economic sanctions is an integral part of a normal collective bargaining system, the public has an interest in being protected from the hardship caused by work stoppages which interrupt the supply of essential goods and services. This is the public interest that demands our primary attention in the present section of the Report. These three public interests at best are in a condition of uneasy balance, and not infrequently are in a state of disharmony.

577. It is necessary, in these latter circumstances, to determine which of the foregoing public interests should prevail. Our concern is to uncover a

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[7] See H. D. Woods' address to the Canadian Association of Administrators of Labour Legislation, *Proceedings of the Thirteenth Annual Meeting, Ottawa, 1954.* (These Proceedings are not available to the public. Copies of the address may be procured from the author.)

[8] See H. W. Arthurs, *Essential Industry Disputes,* Task Force Study.

scheme by which that selection may be made in a manner that does least violence to the integrity of the system and to the fundamental values on which the validity of collective bargaining is based.

578. The expression of the public interest in being protected from the hardships of work stoppages takes many forms. Generally, they refer to protection of life and health, maintenance of public safety and order, and preservation of the state. From our studies of Canadian experience and of events and experiments in countries with comparable industrial relations systems and social matrices, we make seven observations which are fundamental to the determination of a scheme for containing these disputes. First, it is extremely difficult to say with certainty or conviction in advance of actual events in what industry or service and at what time resort to economic sanctions ought to be curtailed. Second, the length of a strike or lockout frequently is a critical factor in making such an assessment. Third, there can be no one policy or procedure that works with uniform success. Fourth, flexibility of approach is essential lest the parties build the existing policy or procedure into their strategies. Fifth, a determination that a given stoppage of work ought to be terminated in the public interest is essentially a political decision. Sixth, the political element in a potential emergency dispute is an inducement to the parties to drive the dispute beyond any procedural device for settlement and into the political arena. Seventh, circumstances may be expected to arise in the eventual course of industrial conflict in which disobedience to and defiance of the law will not be forestalled by that law.

579. We are therefore led to ask two questions in the pursuit of a solution or solutions. First, can devices for settlement of potential emergency disputes be improved to slow down their drive into the political arena and to discourage disobedience of the law? Second, what particular political arena should ultimately receive the dispute?

580. We have sought to give fair weight to each of the competing public interests outlined above, to recognize the hazards of *a priori* judgment of the public interest, to allow for variations in procedures as special considerations within industries may dictate, to recognize the political element in emergency-dispute decision making, and to minimize both the total politicization of such disputes and disobedience of the law through participation of the parties in the determination of procedures by which they are to be governed.

581. We recommend that there be created a three-man Public Interest Disputes Commission, independent of any government department, reporting to the Prime Minister, and composed of public members only. We recognize a potential difficulty in obtaining the consent of persons to serve on the Public Interest Disputes Commission, particularly if it were a full time responsibility. We therefore recommend that the Commission be composed of persons serving part time, with a small full time secretariat of high calibre and with access to the Canada Department of Labour and other sources for assistance. To ensure that the members of the Commission have the confi-

dence of the parties as well as the public, the Canadian Industrial Relations Council, the creation of which we recommend later, should be consulted in their selection. Once appointed, such members should have the equivalent of tenure during overlapping terms of nine years each.

582. The Commission would have two major functions. The first relates to determining special procedures for resolving industrial disputes in industries in the federal jurisdiction which, because of their record of industrial relations, are prone to disputes which are likely to jeopardize the public interest. The second function relates to the handling of actual disputes in any industry under federal jurisdiction where the public interest is threatened.

583. The Public Interest Disputes Commission would be charged with assisting the parties, in industries whose record of labour relations has been such as to make them prone to work stoppages likely to jeopardize the public interest, to negotiate special procedures for settling their disputes. In the event of a failure to agree to a procedure, or if the agreed procedure is deemed inadequate by the Commission, the Commission would have power to prescribe a procedure short of seizure, trusteeship, partial operation, statutory strike (full operation with complete or partial impounding of incomes and profits)[9], or compulsory arbitration. Such a procedure would be subject to a three-year limitation in the first instance.

584. Some choices which the parties and the Public Interest Disputes Commission might consider in devising new procedures are conciliation and mediation, non-binding arbitration, voluntary binding arbitration, involvement of the Public Interest Disputes Commission itself, special industrial inquiry including the functions of fact finding and making recommendations, postponement of work stoppage, and special bargaining or consultative procedures. The parties and the Commission would be free to waive the services of a conciliation officer if they so desired.

585. Whatever technique or series of techniques may be adopted, it is clear that not all disputes will be avoided or settled within that framework. Where the exhaustion of such a procedure gives rise to a public interest dispute, and especially where it has lasted for some time, the dispute becomes a political matter. The same would be true of disputes arising in industries where no special procedures were in effect.

586. We therefore recommend that in a dispute where normal or special procedures break down or are exhausted without effecting a settlement, the Public Interest Disputes Commission be available at the request of the government to advise on the dangers to the public of a particular work stoppage. In any dispute, whether or not it is covered by special procedure, the government should also have power, at a point which it considers timely, to request a report recommending a further *ad hoc* procedure for terminating the dispute in the event of an actual work stoppage. Here the Commission

[9] See Abbé G. Dion, *La grève-sans-arrêt-de-travail,* Task Force Study.

would be at liberty to consider the merits of seizure, trusteeship, partial operation, statutory strike and compulsory arbitration in addition to the procedures listed earlier or, indeed, anything else.

587. The report would be a public document, and could recommend alternative procedures. The government would then act in the political arena as it saw fit. The political arena could be Parliament or it could be the Executive of the government acting by Order in Council under authority of an Act of Parliament. The advantage of the Executive forum is private consultation and speed. The disadvantage is that a political decision would be taken by Executive action with potential overtones of authoritarianism. The advantage of the Parliamentary forum is that action would be taken by the main instrumentality of parliamentary democracy, with opportunity for debate and for all parliamentary parties to take a public position on the merits of the proposed action before it is implemented. An Act of Parliament promulgated after a public viewing and a full debate on the range of interests to be reconciled and alternative methods for solution may well be more conducive to acceptability than an executive order. We favour the retention of this reserve power in the sovereign authority of Parliament. In our view only Parliament should have power to impose an end to a strike or lockout.

588. Throughout this Report, we have been mindful of possible implications of our recommendations within the provincial as well as the federal legislative jurisdiction. At this point, our views are more relevant to the latter than to the former, except where provincial legislative assemblies sit for a substantial part of the year or are readily reconvened. Where this is not so, a case can be made for placing relatively more power in the hands of the executive.

589. We wish to give our reasons for recommending the creation of a separate and independent Public Interest Disputes Commission.

590. In our plan for seeking to contain and resolve potential emergency disputes, two basic functions must be performed. First, special techniques for considering and settling disputes must be devised in industries whose past industrial relations performance carries a potential for emergency disputes. Second, disputes must be settled as they arise, whether in these industries or in others.

591. It does not appear prudent to leave either of these functions to Parliament until prescribed procedures break down or prove to be ineffective. Standing legislation requiring different dispute settlement techniques in certain industries considered to be potential hosts to emergency disputes is a poor substitute for custom tailored procedures made after inquiry in depth and subject to modification in light of changing circumstances and evolving industrial relations methods. At the same time, *ad hoc* eleventh-hour legislation enacted in a crisis does not appear to be as potentially profound a solution to industrial conflict as machinery that provides opportunity for long range research into the causes of conflict as a precursor to prescribing a remedy.

592. Nor does it appear prudent to leave either of the two basic functions to the Cabinet until prescribed procedures break down or show signs of being ineffective, or until the Executive considers it desirable to seek specialized advice. The establishment of special techniques and their administration are onerous roles which the Executive cannot reasonably be expected to bear. Moreover, there remains the danger of political pressures or accusations of partiality that may jeopardize the settlement of disputes when they arise.

593. Nor does it appear prudent to leave either of the functions to the Canada Department of Labour. The functions are quasi-judicial and quasi-legislative in nature. The Department by nature is an administrative organism, and we consider it unwise to change its nature by giving it this highly specialized jurisdiction. Furthermore, in the exercise of its administrative functions the Department has an important role in the area of conciliation under the general law. As matters would stand under our recommendations to cut back on the use of conciliation boards and to strengthen the function of conciliation officers, we consider it important that the parties know that in the normal case the role of the conciliation officer marks the end of the line of state intervention. The possibility should be avoided of pressure from a party of interest seeking special advantage to use emergency disputes machinery to circumvent the bar to the use of conciliation boards with its consequence of undermining the essential role of the conciliation officer. To avoid duplication of talents in the selection and administration of techniques of disputes settlement, it would be useful if the Public Interest Disputes Commission could draw on expertise within the Department, but the approval of a negotiated procedure or the imposition of one must be within the Commission's powers.

594. Nor does it appear prudent to leave either function to the Canada Labour Relations Board. Theoretically, technique determination and disputes settlement could be performed as feasibly by the Board as by an independent Commission. However, the Board has important and onerous functions to perform in the administration and enforcement of the general statute law of collective bargaining. Furthermore, we think it prudent to avoid the possibility that the Board might be tempted to threaten the use of a two-tiered emergency disputes jurisdiction to induce compliance with the wishes of the Board in respect of the operation of the general statute law of collective bargaining. In any event, any role it might play in the former area could jeopardize its role in the latter jurisdiction.

595. A final reason for recommending that the Public Interest Disputes Commission be independent of Parliament, the Executive or any existing government department or agency is that, in our view, the government should do all it can to avoid any confusion of the complex role assigned to the Commission in this highly sensitive area of containing potential emergency disputes with other roles of government departments in industrial relations

and allied fields, and to avoid any reasonable cause for disquietude or suspicion that the jurisdiction given to the Commission might be used to advance other government policies indirectly.

C. ADMINISTRATION OF THE COLLECTIVE AGREEMENT[10]

596. We recommend elsewhere that the absolute ban on work stoppages during the term of the collective agreement be partially lifted; the parties would be at liberty in negotiations to opt out of the no-strike no-lockout provisions and resort to economic sanctions in the case of disputes relating to permanent displacements resulting from industrial conversion occurring during the life of a collective agreement.

597. Where, in this one limited area, the parties choose to exercise that option, they should be free to handle the situation as they decide. Otherwise, and in all other areas, the parties should be bound by a statutory model arbitration procedure to operate where they fail to agree to one of their own.

598. In some industries much more imagination is required in the design of such procedures. The need is especially urgent where speed is necessary if arbitration is to serve as a viable substitute for a wildcat strike. The normal arbitration procedure means little to workers in such industries as longshoring and construction, because the job in question may long be over before an award is rendered. One way to give the procedure more meaning in major centres of such activities would be to have permanent arbitrators on immediate call and empowered to issue interim awards on the job. In the absence of such innovations, situations where permanency of employment is the exception rather than the rule are bound to give rise to unlawful strikes designed to circumvent the conventional arbitration procedure.

599. We have observed a number of instances in which considerable success has been obtained in the mediation and voluntary resolution of grievances without resort to the quasi-judicial function of arbitration. Our concern is that the function of mediation not be conducted so as to prejudice the rights of either party in arbitration. We do not offer a single scheme, because the present minimal legal requirements leave great scope to the parties to develop plans of their own. We do, however, recommend that the Canada Department of Labour make its conciliation officers available to parties wishing to use their services in developing their own plans. In keeping with this suggestion, we recommend elsewhere that the parties consider a procedure whereby decisions can be taken at the plant floor to resolve specific grievances without prejudice to their adjudication should a point of principle be taken to arbitration.

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[10] See Paul C. Weiler, *The Substantive Law of Labour Arbitration*, Task Force Study, and S. Schiff, *Judicial Review of Labour Arbitration in Canada*, Task Force Study.

600. We note that under a 1968 decision of the Supreme Court of Canada[11] remedial powers of arbitrators appear to be limited. It is arguable that this decision may harm the arbitration process. Should this prove to be the case there are two possible remedies. One would be for unions and employers to amend their collective agreements so as to grant the arbitrator discretionary remedial authority. The other more general solution would be by way of legislative amendment, a possibility which the Canadian Industrial Relations Council, the formation of which we recommend later, could consider.

601. In any event the parties should turn their attention to arbitral jurisdiction in its many facets. A scheme of continuous bargaining which we recommend in an earlier section should permit dispassionate and exhaustive consideration of this subject.

602. We recommend that arbitrators continue to have power to determine arbitrability and that the parties continue to share the costs of arbitration.

603. We recommend that an arbitration award be filed as an order of the court and be enforceable as such.

604. One of the major criticisms of arbitration is that there are inordinate delays and a critical shortage of persons ready, willing and able to perform the function of arbitrator. We note the emergence of a scheme in Ontario to meet this problem and urge the federal authorities to explore ways in which a co-operative venture might be arranged.

(3) Regulating the Forms of Industrial Conflict

A. STRIKES AND LOCKOUTS

605. The acceptance of collective bargaining carries with it a recognition of the right to invoke the economic sanction of the strike and the lockout. Under our recommendations, after the first agreement has been signed, the right to invoke such sanctions is limited to the period following termination of the collective agreement or to the circumstance in which the parties, in negotiating an agreement, have opted for the right to use economic sanctions during its term only in the case of disputes over permanent displacements resulting from industrial conversion. We would allow conduct amounting to much the same thing as a strike, except that it need not be the product of collective action, in cases of primary and secondary ally picketing where we would not make it a breach of a collective agreement and the law for an employee or group of employees to refuse to enter the picketed premises.

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[11] Port Arthur Shipbuilding Company (Appellant) v. Harry W. Arthurs, Dwight Storey, A. W. Mahoney, United Steelworkers of America, Local 5055, John W. Beaucage, Jack Geravelis and Patrick Manduca (Respondents), Judgment dated October 1, 1968: 68 CLLC ¶ 14, 136.

606. In recommending a continuation of the prohibitions against organization and recognition strikes and against stoppages over all but industrial conversion grievances, we wish to stress the proposals we have advanced earlier to meet the legitimate complaints of unions that have frequently resorted to such strikes. In the construction industry, for example, we recommend interim spot certification in order to make the certification procedure a more viable alternative to organization and recognition strikes. Similarly, in both longshoring and construction, we suggest the employment of permanent arbitrators to ensure the more expeditious handling of grievances.

607. As noted elsewhere, the employer's economic sanction equivalent to the union's right to strike rarely is the lockout: it is his ability to take a strike. Much of what follows in this section, therefore, relates to the strike. However, it is important to note that the employer's capacity to take a strike depends largely on his right to stockpile goods in advance of a strike and to use other employees and replacements to perform work normally done by strikers. Together with the lockout, these possibilities constitute the employer's *quid pro quo* for the workers' right to strike; this is as it should be, in our view.

608. Strikes should be considered in the broadest sense, being the collective utilization or manipulation of the availability of labour as a means of exerting pressure to get others (employers, employees and even governments) to change their positions. The strike, then, would include slow-downs, work-to-rule and other forms of protest in addition to work stoppages. The strike has become a part of the whole democratic system.

609. Trade unions, in this respect, are really no different from, say, a group of professional persons meeting together to determine the fees they will charge to make their services available to clients. Nor, in a less direct fashion, are they any different from an entrepreneur who refuses to sell a good or service for a price lower than he considers acceptable. Given these similarities, why does the public tend to single out trade union tactics for criticism? Unions must employ their tactics collectively, openly, and in a manner calculated to attract the hostility of persons hurt by the use of economic sanctions. Trade union tactics reach out to public opinion in the hope of marshalling it on the side of organized labour. That unions do not meet with uniform success is reflected in criticism of their tactics. It is this invocation of the forum of public opinion that makes the role of trade unions and the regulation of their behaviour at law so sensitive.

610. In addition to the conventional economic strike, it is important to recognize that there can also be political strikes. These two types of trade union strikes can be differentiated on the basis of objectives: a political strike is aimed at changing legislation, whereas an economic strike is directed toward the employer or his agent. Political strikes sometimes evolve from a conventional economic strike. Four of the infrequent political strikes which have occurred in Canada are the 1949 Asbestos strike in Quebec, the strike of doctors in Saskatchewan, the "booking off sick" of railway employees of

the Canadian National Railways in protest against run-throughs, which led to the Freedman Industrial Inquiry Commission on Canadian National Railways "Run-Throughs", and the strike of radiologists in Quebec. Other economic action for political purposes is illustrated by the mass picketing in support of the strike at the Oshawa Times and at the Tilco Plastics plant in Peterborough as a protest demonstration against the use of the equity injunction in labour disputes, and by implication at least against the unsatisfactory state of the law of picketing and boycotting. The political strike cannot be done away with by legislation; and it is a phenomenon that might become more common as government becomes increasingly involved in economic and social planning as well as in industrial relations.

B. PICKETING AND BOYCOTTING AND ENFORCEMENT OF THE LAW

(i) *The Nature of Picketing*

611. An essential element in the normal processes of collective bargaining is the right of the parties to resort to economic sanctions. The principal sanction available to employees is the withdrawal of services—the strike. In most cases the termination of production of goods or services, and its impact on the employer, is the major foreseeable consequence of the strike. On occasion—and the number of cases may be growing—the termination of production has a foreseeable impact on persons not privy to the dispute, and the impact of withdrawal of services may be lengthened and strengthened where the employees on strike are able to obtain employment elsewhere. The employer's power reciprocal to the strike is his ability to continue his operations. It is in the employees' interest, therefore, to seek to countervail against this reciprocal power by persuading persons not to take employment or do business with the employer or handle, deal with or consume the employer's product.

612. The traditional medium of persuasion invoked by organized labour is the picket line. Here lies the rub. Organized labour has sought to establish the convention that one does not cross a picket line. There are sophisticated exceptions to this convention, but it is a dominating concept which is designed to effect a conditioned response. The rational element in the conditioning is an appeal to persons to conduct themselves in a manner favourable to the interests of those on whose behalf the picketing is being performed. But as a matter of historical fact, an ingredient in the picketing has been and continues from time to time to be the generation of apprehension of physical violence, property damage or other forms of retaliation. This problem is exacerbated by the fact that although this kind of behaviour generally is condemned by responsible union leaders, and although responsibility for unlawfulness in the form or manner of picketing should be brought home to those encouraging and committing the unlawful acts or making the unlawful threats, persons acting on behalf of organized labour are not averse on occasion to making the truth appear to the unaware or the uninformed to be

other than what it is. Furthermore, one case of outrageous behaviour has an impact far beyond that case—on those conditioned into "respecting" the picket line and on those called upon to assess the nature and legality of picketing.

613. The right to picket is frequently equated with freedom of speech. There is a strong ingredient of "free speech" in an act of picketing, but there is much more besides. The conditioned response in the industrial relations ethos of picketing is evidence enough that it is a calculated economic sanction. The challenge here is to determine the limits of the legitimacy of the use of picketing as a sanction in a manner that preserves the fundamental principle of freedom of speech.

(ii) *Industrial Torts and Picketing*

614. Reference is made in Part Four to the torts of conspiracy to injure, inducing breach of contract, interfering with favourable trade relations, and intimidation. It is necessary at this point to relate these wrongs to picketing and boycotting.

615. It is wrong for two or more persons in combination to do something, albeit lawful if done by one, which causes harm to another, if the predominant object of the combination is to cause that harm. This doctrine of the tort of conspiracy to injure requires a determination of the predominant object of the picketing. If this object is found to be pursuit of self-interest, no wrong is done. However, where any element of illegality is present, persons making the assessment may consider that element as a factor in determining the predominant object of the combination. In that event, the entire picketing may be found to be unlawful. Further, where the picketing is directed against an enterprise that is tangentially or indirectly related to the dispute, there is a tendency in the Courts to find that the predominant object of the picketing is to harm the enterprise, not to pursue the interests of the employees involved in the labour dispute.

616. It is wrong intentionally to persuade or oblige a party to a contract to break it, and the other party to the contract injured by the breach may sue the person who caused the breach. Furthermore, on the basis of the right to trade, it appears to be wrong (the law is not easy to state) for a person who is not a business competitor (if he were he would be exercising his own freedom of entrepreneurial action) to interfere with the favourable trade relations of another. These doctrines of the torts inducing breach of contract and interfering with favourable trade relationships require knowledge of the contract and the relationships, and intent to induce or interfere. However, knowledge may be inferred from general knowledge attributed to the persons whose conduct is being judged, and intent may be inferred from the fact that a person may be taken to intend the natural and probable consequences of his acts. Furthermore, in those two torts the pursuit of self-interest affords no relief from that intent. An act of picketing that has its intended effect is almost certain to cause breach of some contract, whether of supply, pur-

chase, service or employment, and to interfere with some favourable trade relationship of the employer.

617. It is wrong by threat of an unlawful act to cause a person to do something, in itself lawful, that causes harm to another, and the person harmed may sue the person who made the threat. This doctrine of the tort of intimidation requires the threat of an unlawful act. This ingredient of illegality may be found in the commission of the other "industrial" torts as well as in the form or manner in which the picketing is conducted.

618. The juridical problem arises from the fact that the direction of the common law—and in this respect the judicial gloss on the civil law of delict, or civil wrong, borrows much from the common law—is at cross purposes with the legislative policy of collective bargaining. Even in recent times it has been asserted judicially that the public has an interest in entrepreneurial freedom which must prevail over the employees' private interest in collective action. Further, in determining whether there is a proprietary interest to be protected in an application to enjoin picketing, profits of enterprise have been equated with property, and the balance of convenience has fallen against the picketers. The policies and rules of the common law and those of the legislation are out of joint.

619. The recommendations that follow are intended to establish a code of employee and consumer primary and secondary picketing which effectively limits picketing, that can be respected lawfully by other workers, to plants lawfully struck in the course of a negotiation dispute and to directly allied plants. In these circumstances it would become possible for workers, without fear of recourse under law or from their employer, to refuse to cross a picket line either to do work normally done by the strikers or to handle goods or transmit services produced by them or their replacements. In all other situations, such a refusal would subject workers to disciplinary action by their employer and would be cause for an order removing the picket line in question. We wish to make it clear that nothing we have said here is designed to stand in the way of an employee staying at or returning to work during a strike at his place of employment. Indeed, we recommend that an employee's right to return to his job or a lesser job which he is capable of performing be protected in law if the employer is continuing to operate the struck premises and the job has not been filled.

(iii) *Four Aspects of Picketing and Boycotting*

620. In considering what ought to be government policy respecting picketing, boycotting and enforcement of the law, picketing and its intended concomitant, the boycott, may be examined from four aspects: its ultimate object and its foreseeable if incidental consequences—the "why" of picketing; the circumstances of collective bargaining in which picketing may occur—the "when" of picketing; the physical location at which picketing may occur—the "where" of picketing; and the manner or form which picketing may take—the "how" of picketing.

621. The laws of industrial torts have particular relevance to conduct relating to the "why", "where" and "when" of picketing. The general law of torts and delicts (civil wrongs), of general application to society at large and generally designed to protect persons and property, relates to the "how" of picketing. This distinction leads us into disparate recommendations for the "why", "where" and "when", and for the "how". Briefly, because conduct relating to the first three facets of picketing is peculiar to the industrial relations system of collective bargaining, we recommend a form of codification of the law respecting "why", "where" and "when", and a repeal of the common law of industrial torts in respect of cases where the code applies. We recommend also that adjudication under the code be assigned to a reconstituted Canada Labour Relations Board (see later) with a remedy, among other things, of restraining and mandatory orders to replace the equity injunction now available in the courts and that enforcement of the law be under the control of a public enforcement officer. When the officer chooses not to pursue a case, the aggrieved party should be free to do so. When an aggrieved party chooses to do so and discontinues the case before it has been disposed of by the Board, the officer should have power to continue the case to completion. The basis for our recommendations respecting the creation and powers of the public enforcement officer is given later.

622. We recommend that the law respecting the "how" of picketing remain in the common and the civil law and in the law courts with present policies and procedures for enforcement and remedies basically left intact. Thus where pickets engage in criminal acts or tortious behaviour in the manner of picketing, they would remain subject to the same processes as any other citizen engaging in the same behaviour.

623. Respecting the "why" of picketing, we recommend that its legitimacy be determined through the examination of legislative policy, and not through the common law of industrial torts or the judicial industrial relations gloss on the civil law of civil wrongs (delict). Thus, picketing that runs counter to the policies of collective bargaining legislation would be illegitimate; or that runs counter to any other statute, general or special in nature, including the *Criminal Code,* about which recommendations are made later. In brief, if an object pursued by the act of picketing is contrary to an act of Parliament or a provincial legislature, it should be banned.

624. Respecting the "when" of picketing, we recommend that its legitimacy be limited to the circumstances of negotiating a collective agreement and to the point in negotiations at which the employees acquire the right to strike, whether a strike occurs or not. Consistent with our recommendations in the previous section, we recommend against the legitimacy of picketing for organization or recognition purposes or to win a grievance except where the parties have opted for a partial or complete right to strike or lock out during the term of the agreement, an option we recommend earlier solely with respect to disputes growing out of permanent displacements resulting from industrial conversion.

625. Our recommendations relating to the legitimacy of picketing according to its location, the "where" of picketing, are more complex. It is in this area where the greatest risk is run of impairing picketing as an act of free speech in order to contain its use as an economic sanction.

626. We draw a number of distinctions which should be set down at this point. The first is between picketing directed against an employer party to a dispute (primary picketing) and a person or corporation not directly privy to the dispute (secondary picketing). Within the class of primary picketing we distinguish between picketing at the location of the dispute and picketing at some other location of the employer's total enterprise. We draw generally a distinction, which we apply in the categories of both primary and secondary picketing, between picketing that is directed to persons in an employment relationship (actual or potential) and picketing that is directed to consumers. This distinction requires the use of some sophistication by those who design, and by tribunals who determine, the nature of the message which the picketing conveys. In light of United States experience under the provisions of the amended Labor-Management Relations Act, we do not doubt that this sophistication can be exercised. Within the class of secondary picketing we distinguish between an innocent supplier or customer of the employer party to the dispute and a supplier or customer who changes his position *vis-à-vis* the employer so as to ally himself with the employer, that is, a party who opts into a position of being part of the prevailing economic entrepreneurial power against which the union, in the framework of collective bargaining, must seek to countervail.

627. As to primary picketing, we recommend that it be permitted at the location of the dispute and that it be permissible for its message to be directed to people at large. We recommend further that it not be unlawful for employees to refuse to cross such a primary picket line. We recommend further that consumer picketing be permitted at other business operations of the employer; that is, that its message be directed to consumers as distinct from employees, and that if such picketing has a consequence of causing a work stoppage it be *per se* illegitimate. Where, however, an employer acts so as to ally another operation of his total enterprise to the dispute, such as switching orders from the operation on strike to a similar operation in an interlocking corporate conglomerate, we recommend that the union be at liberty to picket the allied operation with a message directed to people at large, and that it not be a violation of a collective agreement for employees of that operation or other workers to refuse to enter the picketed premises. We recommend further that it be proper to lift the corporate veil to determine the identity of the employer.

628. As to secondary picketing, we recommend that it be permitted at the business or operational location of a non-allied supplier or customer, that its message be directed to consumers as distinct from employees, and that if picketing has a consequence of causing a work stoppage it be *per se* illegitimate. We recommend further that picketing be permitted at the business or

operational location of a supplier or customer who allies himself with the employer party to the dispute, that it be proper to lift the corporate veil to determine the existence of the alliance, that it be permissible for the message to be directed to people at large, and that it not be a violation of a collective agreement for employees of the ally or other workers to refuse to enter the picketed premises. Our reason for this latter recommendation is that without it members of organized labour would be obliged to contribute to the aid and comfort given by the ally to the employer in the primary dispute with other employees in the labour movement.

629. Because of our recommendations respecting the "why", "where" and "when" of picketing and respecting the privilege of employees to refuse to cross lawful primary and secondary picket lines in certain circumstances, we see no need for what have come to be called "hot cargo" agreements. In order to preserve the integrity of the codified law, we recommend that the parties be prohibited from contracting out of the new law in this or any other manner.

630. We would not change the substanitve law relating to the form—that is, the "how"—of picketing. Generally, we do not think there is a case for giving to persons who choose to engage in acts of picketing any relief from general laws for the protection of the person and property, such as assault, battery, defamation, trespass, nuisance, and so on. Nor do we think protection should be extended against civil liability for conduct that is a violation of the criminal law. We acknowledge that some of these civil wrongs have characteristics peculiar to industrial relations. For instance, picketing, otherwise legitimate, that persuades persons not to enter premises ought not for that reason alone be considered a legal nuisance. Nor should "language of the streets" necessarily be considered defamatory unless it amounts to misrepresentation of fact, particularly of facts relative to industrial relations. In contrast, mass picketing, which conventionally is defended as an exercise in freedom of assembly, frequently takes on a quality of intimidation, a congenital characteristic that is exacerbated by known instances of violence, and which the courts cannot be faulted for recognizing. Nevertheless, in our view, with the removal of the "why", "where" and "when" of picketing from the common and civil law of civil wrongs, and with the obvious assertion of legislative policy by their removal and assignment to a special tribunal, the general common and civil law of civil wrongs will be interpreted and applied to facts appropriately assessed in a manner consonant with legislative policy of collective bargaining and with principles basic to the law for the protection of persons and property.

(iv) *The Criminal Law*

631. We wish now to comment on the criminal law. There are four sections of the *Criminal Code* which relate to union activity, each with its own peculiar historical origin.

632. Section 365 brings to an end the criminal law of breach of a service contract as such, but declares it a crime wilfully to break a contract connected with the supply of power, light, gas or water, or wilfully to break a contract that results in danger to life or property. We recommend the repeal of these declarations for the reason that they determine that the basis of a crime is breach of contract. In our view this approach to the protection of life and property is incompatible with collective bargaining and with the legitimate use of picketing and boycotting. The goal of protecting life and property should be pursued through a more appropriate rationale. This we have considered in the section on Potential Emergency Disputes.

633. Section 366 has had a tortuous history and is expressed in tortuous language. This is the "watching and besetting" section of the *Criminal Code*. While it may be that the section could better be expressed in language more harmonious with modern industrial relations, we do not recommend its repeal. We are concerned here with the capacity of picketing as an act of free speech and of legitimate persuasion to erupt into extravagant or outrageous behaviour. We are particularly concerned with constraining industrial conflict from taking the form of harassment of domiciles or places of residence or other forms of interference with the right to privacy.

634. Section 367 was introduced into the *Criminal Code* a generation ago to make it a crime for an employer to refuse to employ a member of a trade union, to intimidate employees into not joining a union or to conspire to gain these objectives. This area of employer unfair labour practices has long since been taken over by collective bargaining statutes, and we make recommendations for further strengthening this general area of the law in paragraphs 475-480. We do not consider it appropriate at the same time to leave this matter under the criminal onus of proof and under criminal sanctions. We therefore recommend that section 367 be repealed.

635. Section 410 protects unions from the criminal law of restraint of trade. Similarly, section 4 of the *Combines Investigation Act* (an equivalent provision appeared in the *Criminal Code* as section 411(3) until it was repealed as redundant in 1960) extends to unions protection from the operation of combines legislation. In our view, these sections respectively should remain in the *Criminal Code* and in the *Combines Investigation Act*.

(v) *Enforcement of the Law*

636. We wish now to turn to the question of enforcement of the law. One of the fundamental civilizing goals of the rule of law and the institutionalization of its enforcement is to get disputes off the streets and into the courts, where they may be settled on the basis of evidence and substantive law instead of by roving force of arms. The acceptance of picketing as part of the economic sanctions inherent in collective bargaining accommodates the return of industrial disputes to the streets, where the message of the labour interest in such disputes may reach the public. In our view, this gives

the public a special interest in enforcement of the law. Where the law is of general application, as in the law relating to the "how" of picketing, there is not, in our view, justification for providing machinery for enforcement unique to industrial conflict. Where, however, there is a special law, as in the "why", "where" and "when" of picketing, particularly where the base of the picketing is broadened as our recommendations would effect, the public interest in its enforcement ought to prevail over the parties' interest in law enforcement (or non-enforcement, such as where an employer may prefer to endure the harm caused by unlawful behaviour rather than run the risk of retaliation or general impairment to labour-management relations) should those interests conflict.

637. To this end we recommend not only the assignment of the law of "why", "where" and "when" of picketing to a reconstituted Canada Labour Relations Board but also the appointment of a public enforcement officer by the Governor in Council upon the advice of the Board. Upon being duly apprised of a charge of violation of the law, the officer would have responsibility for processing specific cases before the Board. Again, where the officer does not choose to process the case an aggrieved party would be free to do so. The Board would have power to issue restraining and mandatory orders, including the payment of compensation. Such an order would be filed as an order of the court, and a violation of the order would constitute contempt of court.

638. As to the "how" of picketing, we would leave this area of the substantive law (including the criminal law) in the courts of law with the full range of remedies or sanctions now available there.

(vi) *The Burden of Proof*

639. We recognize that problems of considerable dimension will arise in the normal course of events in respect of evidence of alliances and transfer of production and the burden of proof. In our view, the general rule should prevail that he who alleges must prove. That is, a party alleging an alliance or transfer of production that would justify an extension of picketing must carry the burden of establishing to the Canada Labour Relations Board or the Commissioner that on the face of things such events have occurred. At that point a subsidiary rule of evidence would shift the burden of proof to the other party to refute the *prima facie* case. In this sense the burden may shift back and forth in the course of the proceedings; but the burden of establishing the basic case must rest throughout on the party alleging the events that justify the extension of the right to picket. We do not minimize the difficulties such a burden might present. But were it otherwise an employer would be obliged to prove a negative on the mere allegation of facts; furthermore the employer may be obliged to reveal highly confidential information about the internal operation of the enterprise and about its business affairs which, from a competitive point of view, might be highly prejudicial to its operation and to which a competitor could not get access under any other circum-

stances. Should an employer choose to adduce such evidence in seeking to discharge its secondary onus of proof, it at least has an opportunity to weigh the advantages and disadvantages of doing so.

(vii) *The Equity Injunction*

640. Why are employers driven to use the equity injunction? Collective bargaining statutes for the most part ignore the area of the law relating to picketing and boycotting, and hence provide relatively few effective statutory remedies. Where statutes even tangentially touch the field, sanctions are usually inadequate and slow and provide no remedy for harm done to the employer. This is also generally true of sanctions under the *Criminal Code*. In the rare case where statutes deal directly with the subject of the injunction, access to the courts is maintained and the need for speedy remedy in special circumstances is recognized. Furthermore, members of the legal profession are familiar with procedures and practices relating to the equity injunction, and when a client presents a solicitor with a situation of *prima facie* illegal behaviour causing irreparable harm to the enterprise, the equity injunction is much more appealing than laying an information under the *Criminal Code* or the possibility of making a request to a labour relations board, in many jurisdictions a part time body, for a cease and desist order or for consent to prosecute.

641. Another reason why employers resort to injunctive relief grows out of inadequate criminal law enforcement in some situations. Uncertainty in the availability of criminal law enforcement subverts the essential purpose of such relief. In the absence of effective policing, employers cannot be blamed for seeking alternative remedies.

642. Whatever may be the rationale of the employer's preference for the use of the equity injunction, the remedy is susceptible to some telling criticisms. These criticisms are of three kinds. The first is a charge of abuse of process. The second is that the prevailing procedural rules of court relating to the injunction are unjust. The third is that substantive law by which the legality of the enjoined conduct is determined is unjust. In short, the machinery of justice stands accused of abuse of process, procedural injustice, and substantive injustice.

643. The charge of abuse of process relates particularly to the use of the *ex parte* injunction in circumstances where it is said not to be warranted. The charge of procedural injustice relates to such facets as the use of affidavits instead of *viva voce* evidence and cross-examination, the encompassing by the injunction of persons not party to the litigation, the absence of a right of appeal in interlocutory proceedings, and the criminal sanction of contempt of court with a limited right of appeal. Here also may be listed the argument that the courts, by the nature of litigation and the substantive and procedural law, are dragged into industrial conflict on the side of management. In terms of substantive injustice, labour asserts that the injunction, an equitable remedy designed for the protection of proprietary interests, and

enforceable by a criminal sanction, is based on substantive law which allows employers to use the injunction to protect the profitability of their enterprises in situations of industrial conflict to the prejudice of the use of economic power by organized labour as a countervailing force against the prevailing power of management.

644. The recommendations which we make for the transfer of jurisdiction respecting the "why", "where" and "when" of picketing to the Canada Labour Relations Board and through it to local or headquarters Commissioners, and the reworking of this area of the substantive law, should cut down radically on the frequency of cases in which the remedy of the equity injunction is considered. Our recommendations do not contemplate the elimination of the use of the equity injunction but rather the substitution of a Board or Commissioner order based on a reworked substantive law. The "how" of picketing would still be subject to the equity injunction by such procedures as may be determined through the exercise of provincial jurisdiction.

(viii) *Problems of Implementation*

645. There are two major issues of practicality. First, it would be incongruous, though not necessarily unworkable, if conduct relating to a dispute under federal jurisdiction were subject to different rules from those determining the legitimacy of behaviour in an industrial dispute under provincial jurisdiction. In short, there is an obvious need for uniformity which will require very considerable federal-provincial co-operation. The second issue of practicality relates to the administration of the law. It would be necessary that the tribunal before which cases relating to the "why", "when" and "where" of picketing are to be heard have a presence across the country. That is also true of the office of public enforcement. We believe that this problem also can be met through federal-provincial co-operation.

By agreement between the federal government and the provinces, individual members of provincial labour relations boards could be appointed regional commissioners for the federal board and could function in federal cases as one-man tribunals of first instance. Members of the bench could serve in a similar capacity on a part-time basis. In all federal cases there would be a right of appeal, in the normal sense, to the federal board which we recommend elsewhere be reconstituted as a public member board. The jurisdiction of the federal board would not extend to matters arising in disputes falling within provincial jurisdiction unless the provinces were to bring their legislation into conformity with the proposed federal law and were to give authority to the members of the federal board by constitutionally sound procedures. Similarly, the public enforcement officer would need to derive his authority from the Parliament of Canada and from provincial legislatures if he were to administer the law in both jurisdictions. We recommend that the federal government encourage the provinces to move in these directions. Conformity in the law of picketing and boycotting is of first

priority but conformity in its administration is almost as important. Neither is a prerequisite to the federal government's introduction of the changes we propose in its jurisdiction although each could make a critical difference to their effective implementation.

THE PUBLIC INTEREST IN THE RESULTS OF COLLECTIVE BARGAINING

646. Where collective bargaining results in an impasse and a work stoppage occurs, the public often has an interest in the damage which can accrue from the shutdown. Not as widely recognized until recently is the effect which the terms of settlement of a union-management dispute can have upon society at large. In this section we examine some of the results of collective bargaining.

(1) Collective Bargaining and the Trade-off

647. Part Three examines at length the relationship between collective bargaining and the difficulty that Canada has been experiencing in attempting to achieve simultaneously a high level of employment and stable prices, as well as the other economic goals suggested in the legislation creating the Economic Council of Canada and enlarged upon in its annual reviews. Subject to the limited data and techniques of analysis available, this examination shows that it is particularly dangerous to be dogmatic about the relationship between collective bargaining and inflation. Although the interacting forces of supply and demand appear to be of overriding importance in the inflationary process, the combined impact of market imperfections and institutional pressures in varying degrees in different sectors may be significant. Despite the fact that collective bargaining represents only one such institutional factor, its possible effect is not to be neglected.

648. We recommend that more effort be devoted to the development of increasingly sophisticated models of the economy designed to explain income and cost behaviour at the macro and micro levels in a more refined manner than is now possible. This in turn will require that many existing data inadequacies be overcome. Therefore, we further recommend that existing series be improved and new material developed. In the former category is a need for finer breakdowns of much of the aggregate data which is now available, for example by province, industry and occupation. In the latter is a need for better productivity indices on both aggregate and disaggregate bases.

649. Another inadequacy shows up in the existing earnings and wage and salary series. These make little or no allowance for the cost of fringe benefits which now account for about 25 per cent of total payroll costs in many large enterprises. Until this defect is rectified, everything said on the basis of the existing earnings and wage and salary data about the role of collective bargaining in the inflationary process must be qualified to the extent that the omission of fringe benefit costs distort the analysis.

650. Assuming the trade-off dilemma will be of continuing importance, much also remains to be done by way of reducing the cost of choosing between various combinations of unemployment and inflation. Particularly disturbing are the burdens which both phenomena place upon those who are most adversely affected by them. More needs to be done to minimize the costs of unemployment for those who must go without work because society decides to slow down the economy in order to contain the rate of inflation within acceptable limits. To this end, unemployment and related benefits must be kept more in line with previous incomes of those displaced by such decisions. It is equally important to find more effective ways of protecting those hardest hit by the degree of inflation which is tolerated in order to ensure a given level of employment. Cost of living escalator clauses are called for on all basic income floors, including minimum wages and social security programs relating to income replacement and maintenance.

651. Such measures may aggravate the trade-off problem; yet they are essential unless society expects comparatively disadvantaged groups to bear the costs of decisions made to benefit others. Those most injured by such decisions have little or nothing to do with the causes that give rise to them. They should not be asked to bear the costs of these decisions.

652. Further studies of the adverse effects of both unemployment and inflation would help society determine the most appropriate reconciliation of the two for which it should strive. It is dubious to think in terms of an ideal trade-off, but there must be an optimum point on the prevailing trade-off curve that yields the least-cost combination of unemployment and inflation. That combination cannot be determined without more information about their respective costs and benefits.

653. Of additional concern is the extent to which existing methods of measuring inflation may overstate the problem. The Consumer Price Index is particularly vulnerable to criticism because it is revised only periodically to allow for shifting consumer preferences and is to a great extent insensitive to quality changes. Because these deficiencies are to some degree unavoidable, the index will have a tendency to exaggerate the degree of inflation. This tendency must be borne in mind when assessing the relative costs and benefits of unemployment and inflation.

654. On the basis of present knowledge we would be inclined to put relatively more emphasis on full employment than on price stability. However, the real challenge is to improve the trade-off between the two. To achieve this end, priority should be given to better co-ordination of existing policies and approaches. In addition, a case can be made for a new research body to consider these and possible new policies and approaches in relation to problems arising from private and public income and cost decision-making processes.

655. As for existing devices, fiscal and monetary policies have a basic role to play, especially in the medium and long term. Their fundamental task is to ensure as smooth an overall growth rate in the economy as possible.

They must be directed to the elimination of the substantial disturbances that periodically occur as a result of investment instability and inventory cycles. Fiscal and monetary authorities must also share the responsibility for ensuring that society is at an appropriate point on the prevailing trade-off curve.

656. Broad fiscal and monetary mechanisms cannot achieve these manifold objectives by themselves. A case can be made for making the mechanisms more flexible and selective so that they may be more easily adapted to changing circumstances. An example of such flexibility would be selective fiscal policy aimed at investment decisions, a major source of instability. Incentives for the contra-cyclical accumulation and release of private investment reserves in Sweden provide an illustration of the kind of imaginative thinking that is required in this field.[12]

657. No matter how sophisticated their concepts and implementation, fiscal and monetary policies must be supplemented by a variety of other strategies designed to overcome bottlenecks and market imperfections which make it difficult to achieve full employment and stable prices. If properly employed in conjunction with appropriate fiscal and monetary measures, such policies could contribute substantially to a lessening of the trade-off problem. For example, bottleneck or pressure point strategies are necessary to facilitate the rapid channeling of resources into growing sectors of the economy. In the labour market this means manpower programs that can train and locate sufficient labour to meet anticipated shortages. This will not and should not eliminate the role of shifting wage differentials to meet the changing manpower requirements of the country; but it will lessen the need for extreme shifts in these differentials. In so doing it will reduce the likelihood of above average settlements creating targets at which others are likely to aim. Similar policies must be designed to alleviate bottlenecks in non-labour factor markets. These in turn will serve to lessen the pressures in product markets, although here too additional policies must be devised to eradicate shortages as quickly as possible.

658. Market imperfections should also be rooted out. In the case of a few unions and some other organized groups such as the professions, measures will probably be required to remove arbitrary privately maintained controls over entry into particular markets. On the corporate side there is a need for an adroit combination of anti-combines, regulatory and tariff policies designed to ensure that discretionary market power is held to a minimum and is checked where unavoidable.

659. Aside from the need for more effective integration of general fiscal, monetary and bottleneck policies and related labour relations policies—something which could best be achieved by co-ordinating committees at the highest levels of government—is the question whether more direct steps should be taken to circumscribe decision-making mechanisms that affect

[12] See Assar Lindbeck, "Theories and Problems in Swedish Economic Policy in the Post-war Period", *Surveys of National Economic Policy Issues and Policy Research—American Economic Review*, June 1968, Part 2 Supplement, pp. 2-87.

incomes and costs. Such steps would affect not only collective bargaining and price setting but also other institutional decisions where a degree of discretion is involved. Reflecting the cost-push and demand-shift theories of inflation, it may be argued that relatively little can be done to reduce the trade-off problem unless these types of decisions are subjected to more checks and balances than is now the case. A variety of measures have been suggested.

660. At one extreme is the possibility of direct control over all forms of incomes and costs, including wages and prices. Aside from the administrative and market allocational difficulties which such controls pose, we are opposed to them for two fundamental reasons. First, they entail a degree of compulsion which is incompatible with the total framework of values which we outline in Part Two. This hierarchy of values depends for its existence very largely on the free play of market forces within certain broad limits designed to protect the rights of individuals and of society. Few such limitations have been provided in the economic sphere because legitimate rights and interests therein are difficult to define. Free men have therefore been unwilling to accept any unilateral determination of their incomes except during dire emergencies. Even then they do not always accept what is awarded them, as strikes during periods of wartime wage and price controls attest.

661. Our second objection to income and cost, and especially wage, controls is of more central relevance to our terms of reference. Controls invariably lead to compulsory arbitration of other terms and conditions of employment. In Part Four we review the effect of compulsory arbitration on the collective bargaining process. That effect tends to be so corrosive that we would resist wage controls on this ground alone. This is not to say that such controls should never be imposed even on a temporary basis. There may be circumstances when such drastic measures must be taken, but there should be a consensus to that effect and the controls must be comprehensive in covering all incomes, and they must be provisional if they are to have much expectation of success even for a short time.

662. Short of outright controls over incomes and costs, much recent discussion has been devoted to the concept of an incomes policy. Such a policy may take many forms[13], but most commonly takes the form of wage and price guideposts, a form which is itself subject to various interpretations. The feasibility and desirability of an incomes policy in the sense of specific guideposts in Canada was explored in a special study for the Economic Council of Canada[14] which served as the basis for its findings as presented in its 1966 annual review.[15] Although we do not concur in all the arguments that the Council raised for and against its interpretation of wage and price

[13] David C. Smith, *Incomes Policies: Some Foreign Experiences and Their Relevance for Canada,* (Ottawa, Queen's Printer, 1966).

[14] *Ibid.*

[15] Economic Council of Canada, *Third Annual Review: Prices, Productivity and Employment,* (Ottawa, Queen's Printer, 1966), pp. 147-163.

guideposts (and incomes policies in general), we share its conclusion that Canada would be ill-advised to adopt such an approach even though guideposts may have at least partially served their purpose in some other countries.[16] One advantage of a guidepost program—specific or otherwise—is the potential it offers as a means for providing the public with a better understanding of fundamental economic relationships between wages and prices and other incomes and costs. Guideposts may also serve to help spotlight bottlenecks, market imperfections, and abuses of economic power.

663. Against these and many other possible advantages, however, are ranged a variety of real and potential disadvantages, five of which strike us as being especially telling. First, foreign experience shows that there is usually a lack of consensus on the measurement, meaning and interpretation of guideposts and hence a lack of acceptance of them. Second is a tendency for wage guideposts to become either a minimum target to shoot at or a floor from which to commence negotiations. Third is a risk that a program of guideposts will evolve into something far more rigid and stringent. Fourth, it would be difficult to apply such a policy successfully in Canada where income and price decisions are relatively decentralized and unrelated because of the heterogeneous economic, social and political character of the country.

664. Fifth, as in the case of controls, there is the potential effect on the industrial relations system as a whole and on the collective bargaining process in particular. Guideposts are likely to have adverse effects on the negotiating strategies of the parties, on the conciliation procedure and on other methods of dispute settlement. Guideposts cannot help having such an impact because they force all concerned to give relatively more attention to norms than to the accommodation process. Furthermore, because no guidepost approach is likely to work within the present collective bargaining framework, unrealistic and untoward pressures might arise to change it without any real hope of success and with potentially severe indirect effects. The reasons why guideposts are unlikely to work within the existing system is because the system is relatively fragmented and decentralized. These characteristics reflect the constitution and law of the country and the history, organization and disposition of the parties of interest as well as a host of other influences. Until these characteristics are seriously altered—some of our recommendations would lead to this—it is not realistic to introduce any sort of guidepost approach even in those segments of the collective bargaining system that are comparatively consolidated. They would not accept nor could they afford to live with guideposts applied only to themselves. The imposition of anything resembling specific guideposts would require such a radical change in the present system that it would probably do more harm than good even if it could be accomplished. Our appraisal in Part Three of the relationship between collective bargaining, the trade-off and inflation was not such as to support the risks involved in attempting such a dramatic innovation.

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[16] J. Sheahan, *The Wage-Price Guideposts*, (Washington, The Brookings Institution, 1967).

665. If neither wage and price controls nor guideposts are in order, what should be done about collective bargaining and other private decision-making mechanisms that may aggravate the trade-off problem? Our answer is relatively simple and consistent with all the potential causes of inflation and the trade-off. We would choose a strategy that focuses on the environment within which private decision making takes place and that attempts to ensure that this environment is not conducive to inadequate or undesirable behaviour of incomes and costs.

666. To this end, we recommend the creation of an Incomes and Costs Research Board. We term this new body an Incomes and Costs Research Board for two reasons. First, the title would make it clear that its terms of reference would embrace the performance of all types of incomes and costs and not only wages and prices. This reflects the fact that institutional pressures and market imperfections can emanate from all sectors of the economy. Second, the designation would underline the emphasis to be placed on research, although this should in no way inhibit the Board from making recommendations. Indeed, we believe its research should be policy oriented and should concentrate on remedies directed at particular problem areas. The Board would publish its findings, but would in no way involve itself in their implementation or in the actual income or cost determining process anywhere in the economy. In other words, the Board would be an educational and advisory body.

667. For reasons already stated, we would not have the Board publish any specific income and cost guideposts, although it might want to develop some broad indices for its internal use in selecting potential trouble spots in the economy for detailed analysis. Among the range of problems such a Board might examine, besides the results of collective bargaining in particular cases, are the pricing practices of various industries, the rising costs of medical care, education and automobile insurance, and exclusive licensing arrangements in the professions. To illustrate the range of remedies it could suggest in specific cases, one need only cite the potential scope in the areas of anti-combines, tariff and immigration policies.

668. The Board's status, composition and powers would flow from its focus and terms of reference. It should be an independent body reporting directly to Parliament. Economists should dominate its membership because the problems to be studied are primarily economic. However, because its activities would also have legal, political and social implications, its membership should also include experts from other disciplines. These members need not all be permanent or full time. The Board should have a secretariat and research staff and be empowered to draw on whatever outside assistance it may require. It should have power to initiate research and publish conclusions and recommendations on its own or at the request of the government. It would also have power to refuse requests from the government in order to protect itself from being a repository of problems that could best be solved by other government agencies. The Board should also be empowered to issue subpoenas and to hold public hearings.

669. Although it might seem desirable to provide the Board with an advisory council drawn from all segments of society, our view is that such a group would do more harm than good by inhibiting the Board from making full use of its discretion.

670. Because so many matters the Board would investigate and report on would undoubtedly require remedial action by the provinces, we recommend that the Board be established as a federal-provincial undertaking. We recognize that such action presents political and administrative problems. In part, they might be overcome by having a federal-provincial advisory council attached to the Board, made up of senior professional economists or related experts selected from the federal and provincial jurisdictions.

671. We considered the possibility of having the Economic Council of Canada assume the responsibilities we would assign the new Board, but rejected this for essentially two reasons. First, the Council's focus, quite properly in our view, is on the medium and longer term outlook for the economy. Second, its composition is at variance with that which we think necessary for the new Board. In ruling out the Council, we do not wish to minimize the possibility of overlap between the two organizations. To avoid duplication and to ensure an effective co-operative relationship, we would urge that close liaison be maintained between the two bodies.

672. If we have a reservation about the Incomes and Costs Research Board, it concerns the false expectations to which it could give rise. It offers no panacea. Indeed, in the absence of appropriate and well co-ordinated policies in the other areas we have emphasized, it might be of little value. As a supplement to those policies, however, we believe it could serve a constructive purpose, if only as a means of better informing the public about the hard facts of economic life in a mixed enterprise economy.

(2) Human Adjustment to Industrial Conversion

673. Collective bargaining as a means of dealing with disruptions caused by technological and other change has a number of inherent limitations. As set out in Part Four, these limitations are of three kinds. First, collective bargaining covers less than half of the labour force. Second, when used to deal with these issues, collective bargaining is of varying effectiveness. And third, the results of collective bargaining in the area of industrial conversion are sometimes uneconomic or inequitable or both. This is not to deny that collective bargaining has a significant part to play, for example, in the determination of which workers are to remain in the event of displacement, and in setting rates and conditions of work on restructured or new jobs, but it is to question its broader role.

674. This potentially broader role of collective bargaining was brought into focus by the run-through issue on the Canadian National Railways which led to the investigation by Mr. Justice Freedman and to his recommen-

dations. The issue of adjustment to industrial conversion was subsequently a subject of another inquiry[17] which we have also reviewed in developing our views in this section.

675. The Freedman report would protect an employer, during the life of a collective agreement, in his existing right to make changes whose consequences for the employees were minor. If, however, these consequences were major, a distinction which would be subject to arbitration, the employer would be required to negotiate with the union. Should agreement not be reached, the employer would be forbidden to make the changes until the contract expired and the union had regained the right to strike.

676. We have serious doubts about the value of the general application of the Freedman formula. From the point of view of the individual workman, it makes no difference whether he alone is out of a job because of a change or whether he is in a large company of fellow workers similarly separated from employment. Thus the arbitrator attempting to distinguish between minor and major changes under the Freedman formula would be placed in a difficult position since he would be attempting to dispense justice without standards to guide him. More serious, the uncertainties created for management would, we believe, impose a barrier to efficient performance of their essential innovating role in the economic system.

677. The Task Force accepts the following principles. First, management should be protected in its freedom to make changes which in themselves are not in violation of a collective agreement. Second, workers should be protected by an expanded arsenal of public and private programs designed to facilitate their movement among jobs and localities without undue cost to themselves. Third, a union should be free to take action to induce management to negotiate a plan to solve the consequences expected to follow from the proposed changes or to delay the changes themselves, or to negotiate and strike over the right to strike on the issue during the life of an agreement.

678. In keeping with these three principles, we would give priority to public policies to meet the following needs. First is a pressing need to place more emphasis on education for adjustment at all levels in the school system in order to ensure maximum human adaptability. Second is a need to maintain a high level of employment so that other jobs are available for those displaced by industrial conversion. Third is a need for an active labour market policy designed to facilitate mobility between jobs through improved information, counselling, upgrading, retraining, relocation and income maintenance programs. Fourth is a need to develop as many transferable fringe benefit plans as possible in order to minimize the sacrifice which workers have to make when they move from job to job. Fifth is a need to expand community dislocation programs designed to facilitate either the redevelopment of communities threatened by adverse industrial shifts or the movement of idled resources to other localities where they can be employed.

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[17] *Report of the Industrial Inquiry Commission on the St. Lawrence Ports*, L. A. Picard, Commissioner, (Canada Department of Labour, October 1967), mimeographed.

679. To ensure that there is sufficient lead time to bring policies for the third and fifth of these needs into play in particular situations, employers should provide those concerned with as much advance notice as possible of all technological and related changes likely to lead to significant labour displacement. Despite the administrative difficulties involved, we think that employers should be obliged by law to give a minimum of six months' notice of such change to the Department of Manpower and Immigration and to the union or unions representing the affected employees. It might be wise to limit this obligation, for practical purposes, to changes likely to displace a minimum number of workers. Moreover, the obligation to give such notice could be waived with the approval of the Department of Manpower and Immigration upon the joint request of an employer and the union or unions representing his employees.

680. Within the public policy framework we recommend, collective bargaining could play a constructive supplementary role by helping to adapt public policies to particular situations and by experimenting with new approaches wherever possible. Until such a framework is completed, collective bargaining must perforce play an even greater part in developing appropriate adjustment procedures and approaches. In this context we examine present union concern over the alleged restrictiveness of the existing legislation.

681. The present barrier to union action at the time of any labour displacing change is the provision in the law that all disputes during the term of an agreement be settled without a strike or lockout. If that restraint were removed, unions would be free when negotiating a collective agreement either to secure management's acceptance of a procedure for resolving the problems associated with change during the term of an agreement or to insist on retaining the right to strike over the issue. This is the position in the United States, where the parties retain in law the right to take direct action over any issue arising during the term of the agreement, although in practice well over 90 per cent of collective agreements in that country contain negotiated no-strike no-lockout and grievance arbitration clauses.

682. There is much to be said for the United States approach of making the strike, the lockout and arbitration bargainable issues. The imposition in Canada of the ban on strikes and lockouts and the substitution of binding arbitration during the term of an agreement doubtless has contributed to orderly administration of agreements; yet it has tended to stultify bargaining over the very issues the Freedman recommendations seek to resolve. We do not recommend the complete removal of present constraints of the law. Nevertheless, we see an alternative which could open the door without tearing down the whole wall set up by the existing legal requirements for settling disputes during the term of an agreement.

683. We recommend that the negotiating parties have power by mutual agreement to opt out of the restraint on the strike and the lockout and the requirement to establish machinery for the settlement of disputes resulting from the permanent displacement of personnel occasioned by industrial conversion arising during the period when an agreement is in force.

684. Present restraints would probably be maintained in most relationships. In those situations where a union was deeply concerned about potential worker dislocation due to change, the union could negotiate an agreement containing a formula acceptable to it or a clause to opt out of the legal constraint on the strike during the life of the agreement. Negotiations would take place at a time when the union would be free to strike for either of these alternatives. A special advantage would be the additional strength such a statutory provision would give to a conciliator or mediator in seeking to effect a settlement in which adjustment to change was a major issue.

685. In arriving at our procedural recommendation in this area, we had to weigh the loss in stability which could result from any breach in Canada's long standing policy of banning strikes and lockouts over disputes arising during the term of a collective agreement in favour of mandatory rights or grievance arbitration against instability that can result when changes which lead to displacement are introduced arbitrarily by management during the life of an agreement and the workers affected have no protection or recourse. Admittedly unions can negotiate over such issues in advance and many have thereby secured a measure of protection and recourse in their collective agreements. Nonetheless, the problem remains a potentially serious and disruptive one, calling for procedural as well as substantive relief. The need for the former will lessen as improvements are made in the public policies we have already advocated. As these improvements are introduced, the significance of industrial conversion as a labour relations issue should diminish significantly. Our limited opting out proposal should serve as an incentive to both parties, first to reduce the contentiousness of the issue by building in protection and recourse, and second to spur on the government's development of those public policies without which economic and equitable solutions can hardly be devised.

(3) Other Areas of Concern

686. There are a number of other substantive facets of collective bargaining which, because of their potentially serious economic ramifications, merit more attention than we have been able to devote to them. Among them are the question of wage parity, the relationship between hours of work and cyclical unemployment, progress and profit sharing and productivity bargaining, and the impact of collective bargaining on labour mobility.

A. THE WAGE PARITY ISSUE[18]

687. As we note earlier, the issue of wage parity with the United States has become bigger in Canada in recent years. There is also continuing interest in internal wage parity, especially between various regions of the

[18] For further reference see Allan A. Porter, *Wages in Canada and the United States: An Analytical Comparison,* Task Force Study, and Paul and Ronald J. Wonnacott, *The Wage Parity Question,* Task Force Study.

country. For example, regional parity was a major issue in the recent grain handlers' strike at the Lakehead, where the workers were demanding parity with their West Coast counterparts.

688. Parity is never precisely defined. Imprecision presents special problems with respect to United States parity where there are at least three possible concepts. First is United States parity in Canadian dollars with no reference to the exchange rate and the difference in purchasing power of the two currencies; second is United States parity in Canadian dollars adjusted according to the exchange rate; and third is United States parity in dollars of comparable purchasing power. Most discussion of United States parity so far has revolved around the first concept.

689. United States or regional parity is not possible on an across-the-board basis except where the respective economics of the compared situations are comparable. In other words, all Canadians cannot enjoy United States parity in real terms unless or until Canada's overall productivity rises to theirs. The same is true with respect to inter-regional parity in Canada itself. For example, the Maritime region cannot enjoy parity with Ontario until the productivities of the two regions approximate each other. The only other way to achieve this end would be for other parts of Canada to subsidize Maritime income levels.

690. Parity in any of these senses cannot be achieved by everyone. The question arises whether anyone should enjoy it and, if so, on what basis. A number of criteria are possible, including relative productivity levels in different industries and occupations and the respective market and profit positions of different employers. A more imperative criterion might be the state of the labour market for different types of labour. Since not everyone can reach parity, perhaps it should be confined to those who must be paid it in order to entice them to perform certain types of work that society deems worth while despite the relatively higher wages and salaries required to recruit and hold them in their work.

691. These matters require urgent attention if Canada is to avoid the potential effects on its income structure, price levels, balance of payments and employment which could result from premature and pervasive pressures for income parity of one kind or another. They would constitute an excellent area for the Incomes and Costs Research Board to explore in depth.

B. HOURS OF WORK AND CYCLICAL UNEMPLOYMENT[19]

692. Hours of work is a perennial issue in industrial relations as workers strive for more satisfactory income-leisure balance. As wage and salary levels have risen, workers have pressed for reduced working hours; historically in the form of a reduced work week and more recently in the form of longer holidays.

[19] For further reference see W. R. Dymond and George Saunders, "Hours of Work in Canada", Clyde E. Dankert, Floyd C. Mann and Herbert R. Northrup (eds.), *Hours of Work*, (New York, Harper & Row 1965), pp. 54-75, and Syed M. A. Hameed, *Hours of Work in Canada: Institutional and Economic Determinants*, Task Force Study.

693. In times of economic downturns and unemployment, the demand for shorter hours of work takes on an added dimension. Unions frequently press for reduced hours on the ground that it will increase employment. This premise is based on the lump-of-labour fallacy which assumes that there is inevitably only so much work and that it should be spread more evenly about the labour force. In both theory and practice this approach reflects an unduly pessimistic view of the economy's ability to generate more job opportunities. Historically, this dismal interpretation has been disproved repeatedly. Although reducing hours of work may serve to spread under-employment, that is all it accomplishes unless the income-leisure choice of workers shifts coincidentally with the decline in hours. This shift is highly unlikely. If the decline in hours and the resulting spread in under-employment were only temporary, little harm and much good might be done. The problem is that such reductions are seldom negotiated on anything other than a permanent basis, in which event they become little more than a means to ensure more work at overtime rates as the economy recovers.

694. This is one of many questions concerning hours of work that merits further research. Among other things, both the short and the long run consequences of reduced hours on productivity and income levels require attention.

C. PROGRESS AND PROFIT SHARING AND PRODUCTIVITY BARGAINING[20]

695. As the use of individual incentive plans declines in industry, more use is being made of group incentives. Among the more comprehensive are progress and profit sharing plans which are analogous to the productivity bargaining now taking place in Britain.[21]

696. These approaches frequently lead to greater labour productivity and income and to a number of other attractive indirect effects. Against these possible advantages are the potential adverse effects which they can have on the country's wage structure if, as, and when they become more universal. The actual and potential impacts of such approaches deserve more attention.

D. COLLECTIVE BARGAINING AND LABOUR MOBILITY

697. In Part Four we discuss the relationship between collective bargaining and economic efficiency. Elsewhere we comment on the potential limiting effects of trade unionism itself and of seniority and fringe benefits on labour mobility. These areas have been neglected by researchers in this country.

698. The possible impact of privately negotiated fringe benefits on labour mobility is especially significant. A question of importance is whether

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[20] See Jack Chernick, *Adaptation and Innovation in Wage Payment Systems in Canada*, Task Force Study.

[21] Royal Commission on Trade Unions and Employers' Associations, *Productivity Bargaining*, (London, Her Majesty's Stationery Office, June 1967).

more emphasis should be placed on the vesting and funding of private welfare and pension plans or on the development of more generous universal social security systems.

THE ROLE OF GOVERNMENT

699. We conclude this Part of the Report with suggestions for improving the government's effectiveness as a participant in the industrial relations system. In its broadest sense the government plays a number of roles in the industrial relations system, from that of custodian of the economy to that of shareholder in a number of crown corporations. For present purposes we pass over these more general roles and concentrate on the government as employer, as determiner of the legal framework within which collective bargaining takes place, as intervener in labour disputes, and as determiner of labour standards. These considerations are followed by an examination of the constitutional setting within which the federal government's role must operate and of means by which constitutional difficulties may be overcome.

(1) The Federal Government as Employer

700. It is less than two years since the *Public Service Staff Relations Act* was enacted and a new course charted for labour-management relations in the federal public service. Limited experience under the new framework supports some initial impressions.

701. There has been only one strike under the new system, and although it was disruptive and costly we do not believe it justifies any profound change in the present law.

702. We recognize that there are those who had reservations about giving public servants the right to strike even before they acquired it. We also appreciate that others now share that misgiving as a result of its early use. However, we do not think that such a right, once given, should be taken away without more cause than has thus far been adduced. We are mindful of the corrosive effects of compulsory arbitration, which would be the only reasonable alternative should the right of federal public servants to strike be abrogated.

703. We offer only one recommendation with respect to the government's role as employer, and that concerns the administrative machinery established to implement the new policy. It may be advantageous to combine the work of the Public Service Staff Relations Board and the Canada Labour Relations Board. Although a new board was created to bring the new policy into effect, it would now appear beneficial to combine the two tribunals because they deal with many rights and responsibilities common to both public and private employees and their employers. Any significant differences which may still be required could be accommodated under one statutory and administrative structure.

704. We are aware of difficulties that might arise from combining the two boards. For example, the work load could be more than we have anticipated. But provision could be made for the appointment of additional board members as the need arose while still taking advantage of administrative economies. Also to be considered are the responsibilities with which the Public Service Staff Relations Board is charged with respect to the regulation of industrial conflict growing out of negotiation disputes. These responsibilities could be transferred to the Public Interest Disputes Commission which we recommended earlier. It could continue to make available standing conciliation services in the public service unless the parties agreed to an alternative arrangement under its auspices. With the addition of the power in the hands of the Public Interest Disputes Commission to designate essential individuals who would be obliged to stay on the job in the public service in the event of a strike, the new approach we recommend for potential emergency disputes appears as appropriate to the public as to the private sector of the economy.

705. A major reason for recommending a joint board stems from the fact that there is a shortage of qualified personnel with the kind of expertise required to staff such tribunals. With this in mind, we are confident that whatever accommodations might have to be made to facilitate such a combination would be worth while.

(2) The Canada Department of Labour

706. We would rename the Canada Department of Labour the "Canada Department of Industrial Relations" (*Ministère des relations du travail du Canada*). This Department must not only offer a variety of services on its own but also ensure that they are properly co-ordinated with those of other agencies of government both within and beyond the federal public service.

A. ASSISTANCE IN INDUSTRIAL RELATIONS

707. The Department has two major responsibilities to fulfill if it is to provide adequate assistance to labour and management operating within a collective bargaining process.

708. First, it must ensure that the legislative and administrative framework of rules and regulations within which the parties function is kept up to date. This is not to suggest that the *Industrial Relations and Disputes Investigation Act,* which we would call the *"Canada Industrial Relations Act"* (*Loi canadienne des relations du travail*), should be subject to a major overhaul every year or so. But it does mean that the Act should be constantly reviewed and periodically revised, if necessary, in order to ensure that it effectively serves the interests of labour and management and of the public at large. Otherwise there is no way of avoiding the kind of wholesale updating of the Act that we have been compelled to recommend because it has stood so many years without amendment.

709. Second, the Department has a major role to play in settling and preventing labour-management disputes and in improving relations between the parties. Our earlier recommendations with respect to the conciliation process and the handling of potential emergency disputes are designed to strengthen the role of the Department's conciliation officers; first by removing the possibility of the traditional tripartite board as a second stage of conciliation in the normal case, thereby making the officer the last resort in most instances; and second by setting up a separate Public Interest Disputes Commission with jurisdiction over disputes likely to pose a serious threat to the public interest, a Commission whose standby advisory powers in such cases should leave the parties in some doubt as to what may happen if they fail to take full advantage of the services of the conciliation officer. The latter point would not apply in situations where, under the Commission's auspices, the parties chose or were ordered to comply with alternative procedures, but these are not situations where the officers have had much effect in the past. These changes, together with a continuation of the upgrading of the staff of the conciliation service, should serve to make the service function more effectively in most areas.

710. A number of recommendations have been directed to ways in which more emphasis could be placed on the prevention of disputes and the long-run improvement of relationships. To these ends we stressed the need for greater reliance on preventive mediation, continuous bargaining, experimental clauses and other approaches designed to free relations between the parties. In keeping with this objective we recommend a merger of the conciliation service, the Labour-Management Consultation Service of the Labour department and the Manpower Consultative Service of the Manpower department to ensure a better integration of their activities. Such integration would lead to a more appropriate balance between dispute settlement and problem solving. When the former is the product of an eleventh-hour confrontation it often leaves underlying problems unresolved. More emphasis on follow-up problem-solving approaches is to be desired. Out of this might come even more constructive ways in which workers and their representatives could participate more meaningfully in enterprises. Experiments leading in this direction are virtually inevitable as workers' tolerance for anything less diminishes.

B. LABOUR STANDARDS LEGISLATION

711. There is a variety of programs in Canada in the field of labour standards legislation ranging from general or selective minimum-wage setting to anti-discrimination and safety codes. This section focuses on minimum-wage and hours-of-work legislation because of their potential direct impact on collective bargaining. Minimum-wage and hours-of-work legislation benefit most those workers who are employed in low wage areas and who do not have other means, such as collective bargaining, to protect themselves from the exigencies of the market.

712. An effective labour standards program should aim for a level of wages that is consistent with a defined minimum standard of living, and for regulations that protect workers from the hazards of long working hours. Minimum wages have rarely achieved levels considered necessary to provide for the necessities of life. Historically, it has been difficult for governments to meet their stated objectives for minimum wages because of fear that it would lead to widespread unemployment. An aggressive minimum wage policy could have severe adverse consequences on employment. But if governments are to ensure that workers should not have to work for wages below levels which are considered tolerable by society, means will have to be developed to minimize these consequences. Greater effort is required in the application of manpower, welfare and other programs to assist those who may become unemployed as a result of raising minimum wage levels.

713. The difficulties in hours of work regulations have been of a different order. The objective of limiting the length of the work day and the work week is sound. Nevertheless, the uniform establishment and implementation of regulations forbidding the scheduling of hours above a certain level has worked hardships on a variety of industries because of their structure and the nature of their operations. It has also been disturbing to labour-management relationships in those industries, particularly in cases in which both parties have agreed in their collective agreements to permit longer hours than those allowed under the legislation. The *Canada Labour (Standards) Code,* which imposes a 48-hour ceiling on the work week, provides for granting deferments to give industries an opportunity to adjust to the requirements of the legislation. A large number of deferments had to be granted under the Act. However, deferment has not satisfactorily met some problems which the legislation created, nor is it a desirable method of meeting these problems. There may be cases in which a union, in order to secure its position or for some other gain, is willing to agree to longer hours than is socially desirable. There may also be cases in which a weak union is powerless to remedy a sub-standard work schedule. But in most cases where parties to a collective agreement agree to a certain scheduling of work hours, they do so for good reason. To attempt to change these hours by regulation leaves the government open to a charge of unwarranted interference in relations between the parties. Such interference is justified only if the safety, health and well-being of workers and other citizens are being endangered by the hazards created by long hours of work. Even then a general labour standards code may not be the most appropriate way to handle the problem.

714. We recommend that the government review its objectives for establishing and raising minimum wages to ensure that they are consistent with current needs, and that it explore alternative methods for pursuing the objectives more effectively. In this review, consideration should be given to establishing minimum wage levels consistent with a minimum standard of living, set in consultation with public and private welfare agencies. A minimum-wage policy should be adopted in order to contribute to the establishment of

a uniform living wage across the country. We do not necessarily recommend a universal minimum wage rate, because experience indicates that where there are wide economic disparities a universal standard tends to be lower. It should be possible to have a basic minimum standard subject to upward regional adjustments. An automatic adjustment factor should also be incorporated to ensure regular revisions of the minimum wage to keep it in line with changes in the cost of living, if not with living standards in the economy as a whole.

715. We noted earlier that the implementation of these objectives for minimum-wage setting would probably result in unemployment or rises in the costs of doing business. To meet these adverse consequences, we recommend that a close relationship be established between the Canada Department of Labour and manpower, welfare and investment planning authorities to ensure that the various employment, social security and regional development programs are readily available to minimize hardships which individuals may experience as a consequence of establishing higher minimum wage levels. For example, those who become unemployed as a result of a higher minimum wage should quickly have access to retraining and labour mobility programs. Government authorities should be prepared, through their regional and other investment programs, to develop and assist industries in areas which will be most affected by a minimum-wage policy; and the programs of welfare authorities should be readily available in the event individuals have difficulty in taking advantage of these other programs.

716. If reliance on welfare programs becomes widespread in these circumstances, it may be that schemes such as a guaranteed annual income, perhaps in the form of a negative income tax, offer a more viable approach to income maintenance than would a general minimum-wage program. We urge the Government to commission a thorough study of such alternatives, perhaps by the Economic Council of Canada or by the Incomes and Costs Research Board. However, until such an alternative is found, minimum-wage legislation must assume a key role in the range of policies the government is developing to raise the living standards of the low income population. In achieving this purpose, the setting of minimum wages may have an important positive effect on productivity and economic growth because of the opportunities it offers to maintain incentives, increase general demand and improve resource allocation.

717. A general minimum wage by itself may be insufficient to protect "fair" employers paying wages approaching union rates. To meet this situation, we recommend that the government be prepared to consider the extension of wage rates established under a major collective agreement in a particular industry in a particular area to the remainder of that industry in that area, as under the Quebec *Collective Agreement Decrees Act*. The extension could be implemented on application of either labour or management, and could include major fringe benefits as well as wages. There is an especially strong case for the latter where minimum standards are established for the purpose of bidding on government contracts.

718. With respect to hours of work, we recommend that the ceiling of 48 hours be removed and that industries be free to schedule hours of work as required to meet their needs. Penalties in the form of premium pay for hours worked beyond 40 should be introduced and consideration be given to increasing these penalties for hours worked beyond 48, perhaps in the form of a scale calling for stiffer overtime penalty rates the longer the hours worked. In addition, the government in establishing its hours of work policy should consider the possibility of extending the majority practice in a particular industry to the remainder of that industry in much the same way as is recommended above for the extension of negotiated wage rates. Again, the extension could be implemented on application of either labour or management. This approach makes even more sense in the case of hours than in the case of wages and fringe benefits because of the wide variation in practices in the former area. The parties to a collective agreement should also have the right to petition the government jointly to adjust the penalty clause in the Act.

719. In any event, advance consultation should take place with the affected parties before changes in labour standards legislation are contemplated.

720. These recommendations on labour standards are made to give effect to the adoption of decent wages and working conditions without unduly interfering with the results of collective bargaining. We are not prepared to make recommendations on other types of labour standards such as antidiscrimination, safety and health practices. We believe these to be a proper sphere of government action and urge the promotion of policies to eliminate discriminatory employment practices and to improve the safety and physical well-being of workers.

C. RESEARCH, EDUCATION AND INFORMATION

721. The Canada Department of Labour should also strengthen its work in the fields of research, education and information.

722. Traditionally the Department has been strongest in the first of these areas. In research the Department should concentrate on the policy implications of overall developments in industrial relations and on the maintenance of what might be termed watching briefs in the major industries under federal jurisdiction and those under provincial jurisdiction which are of national significance. The former would better enable the Department to make proposals to keep the legislative and administrative framework up to date. The latter would improve the Department's ability to be of assistance to the parties in their industrial relations. To this end the Department should also make the data it gathers and the research it undertakes as relevant and as available to the parties as possible. The parties in turn should be obliged to file copies of their collective agreements with the Department.

723. The Department should not hesitate to draw on outside researchers on a contract basis or to sponsor independent academic research under the Department's University Research Program. Much excellent work has already been done under both of these auspices and we would merely encourage the Department to put more resources into the programs. We also recommend that more scope be provided for group as well as individual projects under these programs, and that provision be made for funding studies of over one year's duration.

724. Through the Department's University Research Program or some other body, the Department should provide a source of information on all continuing industrial relations research in Canada. One possibility would be for the Department to subsidize the Canadian Industrial Relations Institute to serve as a clearinghouse.

725. The Department could also do more to promote education in the field of industrial relations. There is a serious shortage of competent personnel in virtually every phase of industrial relations. This shortage exists not only in the public service, where there is an acute need for more well-trained researchers, conciliators and arbitrators, but also in the private sector, where both union and management continue to complain of unfilled staff openings. Much more should be done to overcome these deficiencies. There is a pressing need for increased support for university-level programs in industrial relations. Consideration should also be given to the introduction of special programs at the technological institute and community college levels. Additional backing is required for the continuing efforts of union and management to meet their own personnel problems, as in the case of the Labour College of Canada. In all these areas more emphasis should be placed on part time and evening programs. Furthermore, where appropriate, internships should be made available to students wishing to make a career in industrial relations. Finally, much benefit could be derived by arranging for temporary interchanges between union, management, government and university specialists in industrial relations.

726. The Department's information service has been expanded and improved in recent years. We commend this breakthrough if only to help avoid distortions in the public press of developments in the industrial relations field. Serious harm is frequently done by inaccurate and misleading reporting of labour-management news, as is illustrated by the handling of the Pearson formula.

727. We have not undertaken a thorough survey of the Department's various publications, and offer only two suggestions. First, efforts to raise the quality of the *Labour Gazette* should be continued with increasing emphasis on analytical and interpretative materials. Second, the "Labour News Digest" should be circulated much more widely than at present; it should be made bilingual and should cover the major French as well as English language papers across the country.

D. FEDERAL-PROVINCIAL AND INTERNATIONAL LIAISON

728. The Canada Department of Labour is playing a major role in promoting effective co-operation between federal and provincial labour officials and in the international sphere. The Department's support of the work of the Canadian Association of Administrators of Labour Legislation is to be commended, as is its long acknowledged work in co-operation with the International Labour Organisation and other international bodies.

729. With respect to its work in the former area, the Department should continue to strive for more common statutory provisions in Canada's entire industrial relations field, especially where there must be fuller co-ordination if the recommendations in this Report are to serve their purpose.

730. At both levels of government, greater effort should also be devoted to finding ways by which this country can participate more meaningfully in the development of international labour conventions and more readily become a signatory to them, despite their usual impingement on the jurisdiction of the provinces.

731. Canada has certain advantages which should allow it to play an increasingly important part in the affairs of the International Labour Organisation and related bodies. First, she has no history of imperialism and has never had any such designs. Second, her two mother tongues are major working languages of the world. The country should exploit these advantages to make a greater contribution in the international industrial relations sphere.

E. CO-ORDINATION WITH OTHER DEPARTMENTS

732. There is a need for greater effort in the co-ordination of the Department's activities with those of other departments. That need is obvious in the case of the Department of Manpower and Immigration, which has at its disposal an array of manpower policies on which the Department of Labour must draw in its efforts to assist labour and management in their adjustments to human problems posed by industrial conversion. Less apparent but no less real is the need to give more consideration to the industrial relations implications of social welfare programs developed by the Department of National Health and Welfare.

733. Should the Government decide on a reorganization of its various activities relating to human welfare, it would be reasonable to group such functions now located in the departments of Labour, Manpower and Immigration, and National Health and Welfare into a single department which might be termed a Department of Social Services. Short of any such radical transformation, greater use should be made of inter-departmental co-ordinating committees in the areas mentioned and in any others where other departments have interests overlapping those of the Labour department. In our earlier discussion of the relationship between collective bargaining and the trade-off, we also noted the need for a better liaison between the Department of Labour and those responsible for the country's fiscal and monetary policies.

(3) Canada Labour Relations Board

734. We recommend that the Canada Labour Relations Board be renamed the "Canadian Industrial Relations Board" (*Commission canadienne des relations du travail*).

735. In four basic areas of enforcement and administration of the collective bargaining law we make extensive recommendations for changing the roles and remedies of the Canada Labour Relations Board: in the areas of bargaining-unit determination and redetermination, and in the regulation of internal union affairs, unfair labour practices, including unlawful strikes and lockouts, and picketing and boycotting. To bring the structure and powers of the Board into line with its changed role, we recommend that the Board be reconstituted to consist of five persons who are representative of neither unions nor management and who are available for service on a full time basis. The Board should be authorized to sit in three-man panels and should have power to delegate quasi-judicial powers to commissioners located at its headquarters and across the country. The Board should also have a field staff to carry out administrative and investigatory functions.

736. Labour boards in Canada traditionally have been composed of persons representative of labour, management and the public. A tripartite structure for a tribunal charged with handling industrial relations issues is defensible on a number of grounds. First, the presence of a person drawn from the ranks of a party of interest is a source of assurance to that party that his case will be understood and carefully reviewed. Second, that assurance usually makes the tribunal and its decisions more acceptable to labour and management. Third, legislation creating labour boards and determining their jurisdiction gives the boards wide powers of discretion, particularly in the area of certification and determining the appropriate bargaining unit and also, in some instances, in matters of enforcement. A representative type tribunal offers a basis for assurance that discretion will be exercised on the basis of industrial relations experience. Fourth, power of discretion involves a measure of compromise. Where the claim of a party of interest is to be settled, not on the basis of a legally enforceable right but on the basis of what the tribunal considers to be a fair reconciliation of conflicting interests and claims, it is some comfort to the claimant to know that a friendly point of view may be found on the board. Yet we find none of these grounds nor all of them together so persuasive as to outweigh the disadvantages of maintaining a tripartite board in view of the new powers we would have it exercise.

737. We wish to deal with our reasons for recommending a reconstitution of the Board as its jurisdiction relates to bargaining-unit determination and redetermination. Some functions of the Board envisaged in this Report are quasi-judicial in the sense that the Board would be administering rules designed to create substantive rights and duties. Other functions are highly discretionary; a party of interest may have a claim to a decision from the Board, but until the Board has reached a decision through the exercise of discretion, of which the determination of an appropriate bargaining unit is an

outstanding example, the parties rights and obligations are not determinable. It is in these latter cases in which the claim of the parties of interest to a representative type board has residual validity. We therefore recommend that there be a panel of assessors drawn from the industrial relations field as representing the interests of labour and management, to which the Board might turn for advice and opinion on matters relating to certification generally, including the issue of the appropriateness of the bargaining unit.

738. Respecting the regulation of internal union affairs, we recommend that the Board be given important powers of a quasi-judicial nature concerning the rights of individuals. We consider that these powers should not be carried by a tribunal which by its structure has a leaning to compromise.

739. The case for a public member board is stronger in respect of unfair labour practices. The jurisdiction proposed for the Board involves rights and duties, not merely interests; and the total scheme involves the interposition of a public enforcement officer between the parties and the Board exercising quasi-judicial powers. In addition, an order of the Board would be enforceable as an order of a court.

740. Respecting the law relating to the "why", "where" and "when" of picketing and boycotting, we recommend that the enforcement of the law be given to a public enforcement officer who, being charged with the general administration of the law, would have discretion, comparable to that now reposing in a crown attorney respecting criminal prosecutions, to select cases for processing, subject to the right of the aggrieved party to proceed with his case on his own, should the enforcement officer decline to do so. We also recommend the special codification of a segment of the law of picketing and boycotting to establish enforceable legal rights and duties which should not be subject to compromise by the tribunal itself. Possession of industrial relations expertise required in this area is not limited to parties of interest as it was apprehended to be a generation ago. Furthermore, a new kind of expertise is required; skill in assessing evidence, in conducting a fair hearing within the rules of natural justice, in interpreting statutes, in hearing and weighing arguments, and in devising appropriate remedies. This expertise is not limited to persons formally trained in law.

741. Finally, the problems that the representative type board was designed to overcome do not have the imperative that they were considered to have in 1948. In an industrial society as highly pluralistic and as culturally and geographically diverse as ours, it is not possible to create a truly representative board of working dimensions.

742. To ensure general acceptance of those named to the Board, we would involve the Canadian Industrial Relations Council, the creation of which we recommend later, in the selection procedure, at least in an advisory capacity.

743. We also recommend that members of the Board be given a status analogous to that of members of the judiciary.

744. Because of the increased role of the Canada Labour Relations Board, and because of the need for the Board to have a presence throughout the country, we recommend earlier that there be Commissioners located both regionally and at the Board headquarters to whom Board functions may be delegated and who would act as a tribunal of first instance to administer the new law respecting picketing and boycotting. The central Board would constitute an appellate tribunal. We recommend that the Commissioners also be given a capacity to accept delegation of authority in matters relating to unfair labour practices, and to carry out investigations under the Board's direction.

745. We also recommend earlier that consideration be given to combining the functions of the Canada Labour Relations Board and the Public Service Staff Relations Board in a single tribunal. In that event there should be statutory power to expand the size of the Board should the need to do so arise.

746. We recommend also that, in the selection of persons to sit on the Board, great weight be attached to the goal of bilingualism; at least two members should be bilingual, and simultaneous translation should be available.

747. The Board should give all its decisions in writing and in both languages. We urge that reasons should be given in all decisions where any new principle is involved.

748. In the hierarchy of trial and appellate courts in Canada there is, in the normal case, a right of appeal from a decision of a court of first instance on matters of fact and matters of law, including matters of procedure. The object of a system of appeals is to offer protection against error, injustice and arbitrary action, and is premised on the proposition that appellate tribunals bring a higher expertise to bear on the subject of the litigation; where the trial court is in a better position to make a decision than the court of appeal, as in the assessment of evidence based on the observation of witnesses and presence throughout the trial, appellate courts are reluctant to reverse a trial court except where clear grounds are presented.

749. At the present time there is no right of appeal as such from a decision of the Canada Labour Relations Board to a court of law. There is, nevertheless, access to the courts for the purpose of ensuring that the Board stays within its statutory jurisdiction, that it exercises its powers when a party has a claim thereto, and that it acts with procedural fairness. This right of review, as distinct from a right of appeal on the merits, is a typical limitation on the jurisdiction of courts over administrative tribunals. These tribunals, generally speaking, make rules and administer them; they may have an investigatory power relating to the enforcement of the law; and they almost invariably are created to meet a social need which the ordinary administration of justice in courts of law, under an adversary system and with a limited range of available remedies, is not designed to accommodate. In short, administrative tribunals generally exercise a quasi-judicial function based on a particular expertise.

750. In our view the special competence of courts of law in the industrial relations area lies in assessing the behaviour of the Canada Labour Relations Board to determine whether the Board stays within its jurisdiction, whether it exercises its jurisdiction as required, and whether it goes about its business in a manner that is procedurally fair. For this reason we recommend that there continue to be a right of review in a court of law. We do not recommend a right of appeal, in the sense described earlier; we adopt as our reason that given for a similar recommendation by the Royal Commission on Broadcasting:

> In general, an appellate body brings something more to the consideration of the problem than has been provided by the court of first instance. We do not, as a rule, substitute one man's judgment for another man's, unless the man sitting in appeal has some special competence or extra experience in the subject matter.[22]

751. We wish to emphasize that the reconstitution of the Board is crucial to some of the most important of our recommendations. We do not wish to appear to take an "all or nothing" position respecting our recommendations; but we do take most strongly the view that the restructuring of the Board is indispensable to the implementation of our basic recommendations, in the four areas considered in this section.

(4) The Constitutional Division of Authority

752. *The British North America Act* casts a long shadow over many of our recommendations. We recognize that the limitations on the power of Parliament to enact legislation in the labour field puts severe restraints on the capacity of Parliament to adopt and implement policies without the concurrence or active co-operation of the provinces. In formulating our recommendations heretofore we have concentrated on what we believe to make good industrial relations sense. We seek in this section to reconcile these recommendations with constitutional limitations.

753. A number of provisions of the *British North America Act* must be weighted in taking the measure of the constitutional obstacles to the implementation of some of our recommendations. These are described in detail in Part Two. We do not here set out to offer an opinion on the wisdom of divided authority in the labour field. We are constrained, nevertheless, to weigh constitutional obstacles to the implementation of our recommendations and to consider how they may be overcome.

A. THE OPERATION OF COLLECTIVE BARGAINING

754. One of our major recommendations is that there be a relaxation in the present practice of finality in determining bargaining units in order that the structure of collective bargaining may have a better chance of finding its

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[22] *Report of the Royal Commission on Broadcasting (1957)* (Ottawa, Queen's Printer, 1957), Vol. 1, p. 116.

own level. Another set of significant recommendations bears upon conciliation and other methods of dispute settlement, especially in potential emergency disputes. Federal policy in these areas can be applicable only to industries within its jurisdiction. In industries such as meatpacking, which has proved to have many national characteristics while remaining within provincial jurisdiction, a continuing scheme of co-ordination will be required in order to maintain a *de facto* national bargaining unit.

755. Should it be desirable to extend the scope of federal collective bargaining legislation to industries now within provincial jurisdiction, two avenues short of constitutional amendment appear: a declaration under section 92 (10) that an industry is for the general advantage of Canada; and federal-provincial inter-delegation of powers. The former does not require provincial consent, may be done by naming an industry, and brings that industry under federal jurisdiction for all purposes, not just for labour relations. Each of these three characteristics carries its own advantages and disadvantages: unilateral action may or may not be politically desirable; piecemeal "take-over" may or may not be good policy; and complete absorption of an industry into the federal sphere may or may not be a desirable extension of federal responsibility.

756. Federal-provincial inter-delegation of powers has considerable appeal because it stems from bilateral recognition of the desirability of a national labour policy in certain areas. Its disadvantage is that without co-operation the exercise would be futile, and little desire for such co-operation has appeared respecting present opportunities under the *Industrial Relations and Disputes Investigation Act* (section 62) for creating special federal-provincial arrangements. Even as minimal a form of co-operation as arranging a common policy in the area of compulsory conciliation at a common expiry date could assist some industries in their industrial relations problems as they are made more difficult by differences of political jurisdictions.

B. INTERNAL AFFAIRS OF UNIONS

757. We make recommendations earlier in this Part with respect to union security and the check-off; internal union affairs relating to members' rights; ratification and strike votes; political action; and union accountability. These recommendations have two aspects from a constitutional law point of view: they can be looked at from the basis of federal control over private, generally unincorporated, associations; and they may be regarded as aspects of other specific matters.

758. Control of organizations such as trade unions probably falls *prima facie* to provincial jurisdiction under the rubric of property and civil rights. The whole legal characterization of these entities and the general thrust of constitutional jurisprudence and legislation point to this conclusion. If the Canada *Corporations and Labour Unions Returns Act* survives a test of its constitutionality, it will probably be because of Parliament's trade and commerce power. Even the constitutionality of the Canada *Trade Unions*

Act, which permits unions by voluntary action to gain rights under the statute, has been doubted in the courts. Attempts to promulgate federal legislation on trade unions *per se* would probably fail in whole or in part. In short, an analogy may be made to the field of corporations: Parliament can enact permissive legislation, but it cannot require all unions to conform to standards it sets.

759. Parliament has clear power over trade unions which operate in certain areas of activities. Specifically, to the extent that unions must seek certification under federal legislation in relation to collective bargaining, or may be accorded recognition voluntarily as a matter of statute law, they may be compelled to comply with requirements of that legislation which touch on internal matters. Thus, federal collective bargaining legislation may require all unions operating in its jurisdiction to meet standards set out in that Act. Such a view means that, under now typical legislation, "qualified unions" must meet certain standards in relation to their constitutions and negotiated collective agreements.

760. On this approach, therefore, the items set out above can be legislated on by Parliament. Union security is one aspect of the terms of collective agreements. It seems clear that on this head, or as a part of the certification procedure, unions must meet the standard set if they are to operate in the federal jurisdiction. Similarly, to represent employees in the federal domain, unions can be required to meet certain standards in their constitution and general practice respecting both actual and potential members. Such obligations could also be enacted with respect to the way in which unions conduct ratification and strike votes. Political contributions can be dealt with on a similar heading inasmuch as the subject affects federal elections and political parties. Finally, the various forms of union accountability which we spell out could be made mandatory on all unions operating in the federal jurisdiction.

761. The shortcoming of this approach is that federal control over collective bargaining is limited because of its narrow industrial jurisdiction. Possible remedies short of constitutional amendment have already been reviewed.

C. PICKETING AND BOYCOTTING

762. In the section on picketing and boycotting and enforcement of the law we express the view that uniformity of provincial laws is highly desirable and that lack of uniformity could lead to incongruous results. Much could be accomplished to reach uniformity of substantive and procedural law through federal-provincial and inter-provincial delegation of powers, a procedure discussed earlier.

763. We recognize that picketing and boycotting involve strong elements of freedom of assembly and freedom of speech. Without an entrenched *Bill of Rights* or without judicial determination that certain fundamental human rights inhere in the *British North America Act,* this area would appear to fall within the provincial jurisdiction of property and civil rights.

Although some constitutional judgments support the view that there is an implied right of freedom of speech that is a matter of federal competence, the concept of inherent rights has yet to gain majority support. Nevertheless, picketing and boycotting, whatever their ingredients of freedom of speech and assembly, are substantially more: they are well recognized economic sanctions used, generally, to buttress the economic sanction of the strike. We suggest that this ingredient, essential to the nature of the behaviour, makes constitutionally valid federal legislation applying to labour disputes in industries falling within federal jurisdiction. In our view this is a more acceptable approach, from a philosophical standpoint, to resolving the issue than falling back on the competence of Parliament in the criminal law field. We do not dismiss out of hand the argument that the essence of such legislation would fall within "property and civil rights". In our view, however, this is an area in which there is a great need for gain in law reform, and that Parliament can do much—perhaps much more than the provinces may be able to do on their own—to bring about that gain. That is why we accept this subject as falling within our terms of reference and why we make our recommendations in the earlier section. The constitutional and practical obstacles may be formidable; the prize of reform is substantial.

D. LABOUR STANDARDS

764. It is now recognized that the regulation of employer-employee relationships is so integral a part of an undertaking that exclusive legislative authority in respect of such matters vests in that body having legislative authority over the undertaking in general. Hence Parliament has jurisdiction in the field of labour standards as they apply to industries falling within the federal sphere by virtue of Parliament's residual powers in section 91, section 92(29), and section 92(10) of the *British North America Act*. Federal jurisdiction under section 92(10) appears from recent constitutional judgments to be broadening. We do not have any serious doubt that our recommendations respecting labour standards can be implemented. If, however, the federal law is to impinge more widely on Canadian industry, there are at hand the techniques of designation and of federal-provincial delegation of administrative authority or referential incorporation of present and future legislation of another jurisdiction (anticipatory incorporation by reference), short of constitutional amendment.

E. CANADA LABOUR RELATIONS BOARD

765. Our recommendations respecting new powers and procedures for a reconstituted Canada Labour Relations Board raise constitutional issues. By section 92(14) of the *British North America Act,* administration of justice in the provinces, including procedure and civil matters, is a provincial responsibility. We recommend that the Canada Labour Relations Board have extensive quasi-judicial powers, including important remedial powers. We do not, however, intend that our recommendations in any way alter civil procedures

in provincial courts. We do recommend that certain areas of the substantive law—the "why", "where" and "when" of picketing and boycotting—be suspended insofar as they may be applicable to labour disputes in industries falling within federal competence, and that the Canada Labour Relations Board administer a new statutory substantive law by statutory procedures and statutory remedies. It is not inconsistent with this that an order of the Board be enforceable as an order of a court.

766. Should the Governor in Council wish to appoint a high court judge as a Commissioner in any instance, there may have to be an amendment to the *Judges' Act,* a federal statute and clearly within the competence of Parliament, to authorize the performance of extra-judicial functions of a quasi-judicial nature.

F. INCOMES AND COSTS RESEARCH BOARD

767. There should be no constitutional obstacle to the establishment of an Incomes and Costs Research Board. Essentially it is conceived of as an advisory body, although it may require powers of *subpoena.* In any event, we recommend that it be a joint federal-provincial board; provincial co-operation should preclude any issue of constitutionality. If a constitutional base were required it probably could be found in Parliament's trade and commerce power.

G. NO-MAN'S LAND

768. Some industries, particularly in transportation, find that at a given moment they may be the victim of a divided jurisdiction; they may find that they are claimed by both federal and provincial jurisdictions or by neither. Litigation doubtless resolves some of these issues from time to time, but it is an expensive and piecemeal way of seeking a solution. We can do no more than comment on the existence of the constitutional no-man's land that may at any point be claimed by both or neither and the difficulty in which it must place the industrial relations of certain industries.

(5) Canadian Industrial Relations Council

769. Departments of labour and industrial relations in general have been well served by labour-management advisory committees in a number of jurisdictions in this country and abroad.[23] We recommend that such a body be established at the federal level in Canada and that it be termed the "Canadian Industrial Relations Council" (*Conseil canadien des relations du travail*). The Council would be able, on its own initiative or on the request of the Department, to examine all manner of industrial relations issues and to offer its advice and counsel, especially on proposed policy and program changes.

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[23] See Aranka E. Kovacs, *A Study of Joint Labour-Management Committees at the Provincial Level in the Provinces of Canada,* Task Force Study.

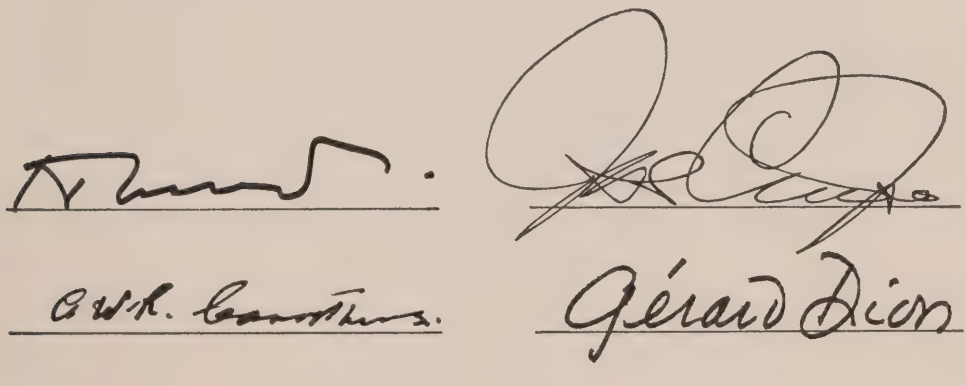
770. The Council should be chaired by a prominent public citizen who is acceptable to both labour and management. It should have two vice-chairmen, one drawn from labour's ranks and the other from management's ranks. In addition, the Council should include at least two other public members as well as three other union and three other management representatives.

771. The Council should have a small secretariat of its own, but for most of its resources should draw on the staff of the Canada Department of Labour as well as on any outside assistance it may consider desirable.

772. The Council should establish sub-committees in each of the Department's major areas of responsibility and should have power to co-opt additional members for those committees.

773. Although the Council's relationship to the Department would be strictly advisory, it should have an independent existence and should be required to prepare an annual report to Parliament on its activities. The Deputy Minister and other departmental officials would participate in the Council's activities and those of its sub-committees to the extent that the Council deemed such participation advisable. Experience in other jurisdictions suggests that the Department itself should not have a representative on the Council, *ex officio* or otherwise, because such representation tends to inhibit the Council from performing the role expected of it.

Our views and recommendations contained in this Report are respectfully submitted for your consideration.



Ottawa
December 31, 1968.

APPENDICES

Appendix A

MATERIAL RELATING TO THE ESTABLISHMENT OF THE TASK FORCE ON LABOUR RELATIONS

On September 2, 1966, the Prime Minister of Canada made a statement to the press concerning a Bill just passed by Parliament to bring an end to the railway strike. Following this statement, according to an unofficial transcript, the Prime Minister added:

> Before I leave the strike situation and the labour situation generally, I think I should tell you that on Monday . . . we will be announcing the setting up of what I could call a task force composed of government labour experts and other experts outside government to look into this whole question of labour disputes, and the procedures and provisions of the current laws that we have to deal with them, and to recommend to Government changes that may be required. There will be an announcement in the House of Commons about this in detail on Monday by the Minister of Labour, but I wanted to announce it before I left to indicate that the announcement is going to be made.
>
> The head of this task force will be Dean Woods, Dean of Arts and Science at McGill University who will be known to many of you, I think, as an expert in this field, and was, until his recent appointment as Dean, Director of the Industrial Relations Centre at McGill University.

On September 9, 1966, the Minister of Labour, in reply to a question in the House of Commons, made the following statement:

> I think the only answer I can give to that question at this time is that the government has given consideration to the advisability or otherwise of some changes that might deal more effectively with problems of the nature raised by my hon. friend. It was for that reason that the Prime Minister announced just before his departure to the Commonwealth prime ministers' conference that a task force was being set up to study this important

problem, under the leadership of Dean Woods of McGill University. I might say that Dean Woods is in Ottawa today conferring with officials of the office of the Privy Council, my deputy minister and others on this important matter. I doubt whether it would be wise for me to say anything further until we have had the recommendations or suggestions from the task force.[1]

A further statement was made by the Prime Minister in the House on December 8, 1966, in reply to a question concerning the establishment of the Task Force:

> . . . the government has set up a task force under Dean Woods of McGill University to inquire into these far-reaching and important matters and to report to the government as quickly as possible so that the government will be in a position to decide what action should be taken to deal with these longer range problems.
>
> . . . I do not have the names before me but appointments have been made. There is also to be appointed a consultative committee representing various aspects of our national life. I am not sure whether all members of the consultative committee have been appointed but I will make the announcement to the house as soon as I can.[2]

Additional details about the Task Force were announced by the Prime Minister on December 13, 1966, as follows:

> Mr. Speaker, some hon. members have asked questions about the composition of the labour relations task force. I should like to reply now by saying that we have retained the services of four task force members and have selected a full-time executive officer. I think members of the house know that Dean Woods of McGill University is the chairman. Abbé Dion of Laval University, Professor John Crispo of the University of Toronto, and Dean Carrothers of the University of Western Ontario, are the members of the task force. George Saunders, who is at present the director of the economics and research branch of the Department of Labour, has been lent to the task force as its full-time executive officer. In addition, as work progresses a number of other public servants and outside consultants will be associated with the work of the task force. Some of them have already agreed to serve, but not all of them have yet been approached.[3]

In a letter of the same date to the Chairman of the Task Force the Prime Minister set out terms of reference:

> I am pleased to learn that the work of assembling the Special Task Force on Labour Relations under your Chairmanship has been progressing well. I am happy to endorse the selection of Father Gerard Dion, Professor John Crispo and Dean A. W. R. Carrothers as the other members.

---

[1] House of Commons Debates, September 9, 1966, p. 8255.
[2] House of Commons Debates, December 8, 1966, p. 10861.
[3] House of Commons Debates, December 13, 1966, p. 11055.

In addition, Mr. George Saunders of the Department of Labour will be seconded to the Task Force on full-time duty as Executive Officer and Research Director. Associated with the above named members would also be a number of senior Civil Servants from those Government Departments primarily concerned.

The Task Force has been set up to examine industrial relations in Canada and to make recommendations to the Government with respect to public policy and labour legislation and on such other matters as it considers relevant to the public interest in industrial relations in Canada. In carrying out its duties the Task Force should feel free to adopt such procedures as may be appropriate.

While the Task Force will report to me, as Prime Minister, I should stress that the work which you are undertaking is regarded by the Government generally as a matter of great importance and I can assure you of the full cooperation and support of those resources available to the Government which may be deemed useful or desirable in the discharge of your functions.

Arrangements are also being worked out to provide for appropriate consultation between the Task Force and other interested parties, including labour and management.

I fully appreciate that a task of this significance will require careful and extensive study and I am pleased to note that you and your colleagues recognize the importance of moving ahead with all possible expedition and of identifying priorities amongst the various phases of your work.

On March 15, 1967, the Government announced the formation of a Consultative Committee for the Task Force on Labour Relations. The text of the announcement follows:

The Acting Prime Minister announces that arrangements have been made for a Consultative Committee to work with the Labour Relations Task Force.

When the Prime Minister originally announced the composition of the Task Force last December 19th, he said that the government would also be making appropriate arrangements to establish a method of ensuring that interested parties in Canada had an opportunity to be consulted as the work of the Task Force progressed. The government wanted to ensure that the views of management and organized labour and of the public at large were made known to the Task Force.

The government has now arranged with the Economic Council to have their Committee on Labour-Management Relations act in a consultative capacity to the Task Force. The Task Force will meet with the Committee in the immediate future and from time to time as its work proceeds.

The committee is chaired by R. M. Fowler, the Secretary is Russell Bell, and its members are: A. Andras, J. A. Belford, W. J. Bennett, Roger Chartier, François E. Cleyn, Louis Couillard, Arthur R. Gibbons, Claude Jodoin, W. Ladyman, D. A. S. Lanskail, S. A. Little, William Mahoney, Hugh A. Martin, W. H. Muir, Marcel Pépin and Robert Sauvé.

Appendix B

CONSULTATIVE COMMITTEE OF THE ECONOMIC COUNCIL OF CANADA TO THE TASK FORCE ON LABOUR RELATIONS

Chairman

*Robert M. Fowler,
President,
Canadian Pulp and Paper Association,
Montreal.

Members

A. Andras,
Director of Legislation and Government Employees' Department,
Canadian Labour Congress,
Ottawa.

J. A. Belford,
Vice-President,
Personnel and Industrial Relations,
Massey-Ferguson Limited,
Toronto.

*W. J. Bennett,
President,
Iron Ore Company of Canada,
Montreal.

Roger Chartier,
Director of Personnel,
Hydro-Quebec,
Montreal.

*François E. Cleyn,
President,
Cleyn and Tinker Ltd.,
Huntingdon, Quebec.

William Dodge,
Secretary-Treasurer,
Canadian Labour Congress,
Ottawa.

*Arthur R. Gibbons,
Executive Secretary,
Canadian Railway Labour Executives Association,
Ottawa.

W. Ladyman,
International Vice-President,
International Brotherhood of Electrical Workers,
Toronto.

D. A. S. Lanskail,
President,
Pulp and Paper Industrial Relations Bureau,
Vancouver.

Stanley A. Little,
National President,
Canadian Union of Public Employees,
Ottawa.

*Donald MacDonald,
President,
Canadian Labour Congress,
Ottawa.

*William Mahoney,
National Director for Canada,
United Steelworkers of America,
Toronto.

*Hugh A. Martin,
President,
Western Construction and Engineering Limited,
Vancouver.

W. W. Muir,
Vice-President,
Personnel and Industrial Relations,
Hawker Siddeley Canada Limited,
Toronto.

Raymond Parent,
General Secretary,
Confederation of National Trade Unions,
Montreal.

*Marcel Pépin,
President,
Confederation of National Trade Unions,
Montreal.

*Arthur Smith,
Chairman,
Economic Council of Canada,
Ottawa.

W. T. Wilson,
Vice-President,
Personnel and Labour Relations,
Canadian National Railways,
Montreal.

---

* Permanent members of the Labour-Management Committee of the Economic Council of Canada.

SECRETARY

*Russell Bell,
Economic Council of Canada,
Ottawa.

FORMER MEMBERS

Louis Couillard,
Formerly Vice-Chairman and Director,
Economic Council of Canada,
Ottawa.

*Claude Jodoin,
Formerly President,
Canadian Labour Congress,
Ottawa.

Robert Sauvé,
Formerly General Secretary,
Confederation of National Trade Unions,
Montreal.

APPENDIX C

SENIOR GOVERNMENT COMMITTEE

M. E. Butler,
Secretariat,
Privy Council Office.

W. R. Dymond,
Assistant Deputy Minister,
Department of Manpower and Immigration.

R. Joyce,
Director,
Resources and Development Division,
Department of Finance.

Harry J. Waisglass,
Director-General,
Research and Development,
Canada Department of Labour.

FORMER MEMBERS

Gil Schonning,
Formerly Director-General,
Research and Development,
Canada Department of Labour.

H. Hume Wright,
Formerly Industrial Policy Adviser,
Department of Industry.

APPENDIX D

CANADA LABOUR RELATIONS BOARD

A. H. Brown, Chairman
J. J. Quinlan, Q.C.,
Vice-Chairman and Acting Chairman
A. H. Balch (retired)
E. R. Complin
J. A. D'Aoust
Jacques Guilbault
Kenneth Hallsworth
A. J. Hills
Donald MacDonald
Gérard Picard
J. Lorne MacDougall,
Chief Executive Officer
George Lane, Secretary

APPENDIX E

PROVINCIAL DEPUTY MINISTERS OF LABOUR

R. E. Anderson, Nova Scotia
R. P. Campbell, New Brunswick
N. D. Cochrane, Manitoba
G. T. Dyer, Newfoundland
T. M. Eberlee, Ontario
J. R. L. Parrott, Saskatchewan
K. A. Pugh, Alberta
Donat Quimper, Q.C., Quebec
W. W. Reid, Prince Edward Island
W. R. Sands, British Columbia

* Permanent members of the Labour-Management Committee of the Economic Council of Canada.

Appendix F

PERSONS DIRECTLY ASSOCIATED WITH THE WORK OF THE TASK FORCE ON LABOUR RELATIONS

Members of the Task Force

Woods, Dean H. D., Chairman
Carrothers, Dean A. W. R.
Crispo, Professor John H. G.
Dion, Abbé Gérard

Senior Staff

Saunders, George, Executive Officer and Research Director
Johnston, Victor, Associate Research Director
DesCôteaux, G., Assistant Research Director
Wilson, H. A. Administrative Secretary

Administrative Staff

Farrell, W. K. Office Supervisor
Dew, Eileen (Mrs.), Secretary
Blais, Suzanne (Miss), Secretary
Scott, Eva (Mrs.), Information Centre
Spendlove, Rosemary (Mrs.), Information Centre
Ireland, Patricia (Miss), Information Centre

Research Project Directors

Arthurs, H. W.
Atkey, R. G.
Bairstow, Frances (Mrs.)
Beach, E. F.
Bélanger, Laurent
Bélanger, Paul
Bell, Joel
Bertram, Gordon W.
Boyd, John D.
Brandt, G. J.
Brazier, D.
Brown, Donald J. M.
Chernick, J.
Christie, Innis
Christy, R.
Craig, Alton
Coates, Daniel
Coates, Norman
Côté, Françoise (Miss)
Cowan, G. K.
Cunningham, W. B.
Dofny, Jacques
Eaton, George E.
Elliott, Howard J. C.
Flood, Maxwell
Forsyth, G.
Goldenberg, Shirley (Mrs.)
Gorsky, M.
Gow, D. J. S.
Hameed, S.
Hébert, Gérard
Herman, E.
Isaac, J. E.
Jamieson, Stuart M.
Kovacs, Aranka (Miss)
Kruger, Arthur
Lorentsen, Edith (Miss)
Loubser, J. J.
MacDonald, Bruce M.
MacGuigan, Mark R.
Malles, P.
March, R. R.
McIntyre, J. A.
McKechnie, Graeme
McKendy, F. J.
McKinney, David W.
Mikalachki, A. M.
Montague, J. T.
Morin, Fernand
Muir, J. D.
Palmer, E. E.
Pentland, H. C.
Peitchinis, Stephen
Porter, Allan A.
Proulx, Pierre-Paul
Quinet, Félix
Reuber, Grant L.

Rogow, Robert
Samlalsingh, Ruby (Miss)
Schiff, Stanley
Simmons, C. Gordon
Solasse, Bernard
Swartz, Gerald
Tremblay, Louis-Marie
Vanderkamp, John
Verge, Pierre
Wace, Stephen T.
Weiler, Paul C.
Westley, William A.
Wettlaufer, J. J.
Williams, C. Brian
Wonnacott, Paul
Wonnacott, R. J.
Zaidi, Mahmood A.

Research Staff[1]

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Bélanger, J.-P.
Brody, B.
Cutler, E. H.
DeSilva, K. E. A.
Doherty, P. J.
Douville, J. R.
Doyle, Donna (Miss)
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Frenette, F.
Germain, L. P.
Gorbet, F. W.
Henry, G. J.
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Houle, M. J.
Howard, A. Earle
Jones, Barbara (Miss)
Kimmerly, I. W.
Kram, R. W.
Kroeker, J. K.
Legault, I.
Lerner, I. M.
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Meyer, P. A.
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Murphy, J. K.
Phelps, D. L.
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Puttee, A. H.
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Smith, Ida (Miss)
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Sunil, K. A.
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Legault, Ivan

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Cheney, D. A.
Cosh, R. A.
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Goulet, Jacynthe (Miss)
Gray, C. A.
Houghton, Janet (Miss)
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Jemmott, Marva (Miss)
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Leung, B. K. M.
McAuley, Ninette (Mrs.)
McGinley, Judy (Miss)
Paquette, Jeanne (Mrs.)
Paquette, Michèle (Miss)
Pound, D. C.
Preston, Gayle (Miss)
Simard, Pierre
Stephens, Joanne (Miss)

[1] Does not include staff hired by project directors under their contracts.

Appendix G

FOREIGN INVESTIGATIONS

(1) General

The members visited the United States and eight European countries to obtain an understanding of experience elsewhere and to discover the relevance of this experience to Canada. These visits supplemented an extensive review of the literature on industrial relations systems in other countries that was carried out in the Task Force Office. This examination of foreign experience was part of a series of special Task Force studies on industrial relations systems in different jurisdictions and industries.

During a week in Washington, the members interviewed senior officials of United States Government agencies having responsibilities in the labour relations area. In addition, they spent considerable time with the Labour Counsellor in the Canadian Embassy. A brief meeting was also held with the Secretary-Treasurer of the AFL-CIO.

In Europe, all or some of the members visited Belgium, Denmark, France, Germany, Holland, Sweden, Switzerland and the United Kingdom over a period of three weeks. They interviewed labour, management and government officials and some university professors in the industrial relations field. These countries were selected because of the important developments that have occurred there of particular interest to Canada. Valuable meetings were held also with the Canadian Labour Attaché in Brussels and officers of the European Common Market and the International Confederation of Free Trade Unions. In Geneva, meetings were held with officials of the International Labour Organisation and the Institute for Labour Studies, as well as with many European students of labour relations attending the First Congress of the International Industrial Relations Association. A schedule of the United States and European visits is given below.

In addition to these foreign visits, several industrial relations experts from abroad were brought in for discussion and consultations. During a three-day meeting in Toronto, the members were able to obtain the views of two internationally recognized industrial relations experts: John T. Dunlop of Harvard University and Benjamin Aaron of the University of California. On another occasion, the members met with Professor J. E. Isaac from Australia, who was teaching in the United States at the time of his invitation to Ottawa.

(2) Schedule of Foreign Visits

Country and Date	*Organizations and Individuals*
UNITED STATES	
June 19-23, 1967	Department of Labor National Mediation Board AFL-CIO National Labor Relations Board Federal Mediation and Conciliation Service Canadian Labour Counsellor, Mr. P. Conroy Council of Economic Advisers
UNITED KINGDOM	
Aug. 21, 22, 31 and Sept. 1, 1967	Ministry of Labour British Royal Commission on Trade Unions and Employers' Associations Trades Union Congress National Board for Prices and Incomes Confederation of British Industries Professors E. H. Phelps-Brown, K. W. Wedderburn and A. Flanders
SWEDEN	
Aug. 23, 24 and 25, 1967	Federation of Industries Labour Market Board Swedish Employers' Confederation Central Organization of Salaried Employees Labour Court Institute for Labour Market Questions Ministry of Interior Confederation of Swedish Trade Unions Professor Folke Schmidt
HOLLAND	
Aug. 23, 24 and 25, 1967	Ministry of Social Affairs and Public Health Socio-Economic Council Central Social Employers' Federation Netherlands Federation of Trade Unions
BRUSSELS	
Aug. 28, 1967	Canadian Labour Attaché, Mr. Guy de Merlis Department of Labour European Economic Community, Department of Social Affairs International Confederation of Free Trade Unions Conseil Central de l'Économie
Aug. 29, 1967	Université Libre de Bruxelles, Centre d'Études de Sociologie et de Droit Social Conseil National du Travail
DENMARK	
Aug. 30, 1967	Danish Employers' Confederation Ministry of Economics Danish Civil Servants and Employees Council Federation of Trade Unions

Country and Date	*Organizations and Individuals*
GERMANY	
Aug. 29 and 30, 1967	Ministry of Labour German Employers' Association German Trade Unions Association (DGB) Kloeckner-Humboldt-Deutz A.G.
SWITZERLAND	
Sept. 4-7, 1967	International Institute for Labour Studies International Labour Organisation First Congress of the International Industrial Relations Association
FRANCE	
Sept. 20, 21, 22 and 25, 1967	Ministère des affaires sociales Confédération générale du Travail Confédération générale du Travail—Force Ouvrière Confédération française démocratique du Travail Confédération nationale du Patronat français

Appendix H

MEETINGS WITH PARTIES OF INTEREST

(1) General

Early in its life, the Task Force gave consideration to the advisability of holding public hearings and sought the views of the Economic Council's Consultative Committee to the Task Force. The members accepted the advice of the Committee that private meetings with the parties of interest and a general invitation for the submission of briefs would be preferable to public hearings.

Private meetings were held with 40 different groups and involved 50 days of discussion. The groups included national union and management organizations, union management officials in industries under federal jurisdiction, and federal and provincial government officials. In addition, the members held private meetings, on request, with union and management groups in different regions of the country. Most of the meetings were scheduled for a full day, but in some cases second and third meetings were arranged to complete the discussions. The members also met with the Honourable Ivan C. Rand of the Ontario Royal Commission Inquiry into Labour Disputes and Marshall Pollock, counsel to the Commission. A schedule of the meetings is given below.

The informal, private and confidential nature of these meetings enabled the parties of interest to express fully and frankly their views on their par-

ticular industrial relations problems as well as on the broader problems facing the country. This approach proved to be extremely valuable. The members increased their insight into the problems and issues that labour, management and government officials believe to be important, and acquired a much deeper appreciation of these matters than would have been obtained from public statements by these bodies. The hearings were particularly helpful in assisting the members to establish priorities for the areas of concern with which they had to deal. They also provided some preliminary understanding of the attitudes of the parties toward alternative courses of action. On the whole, these personal discussions with the parties of interest played a key role in developing many of the suggestions put forth in this Report.

In addition to meeting officials of the departments of labour across the country, the members met the federal and provincial deputy ministers of labour together on six occasions. Five of the meetings were held under the auspices of the Canadian Association of Administrators of Labour Legislation. A final meeting with the deputy ministers, a two-day session at the invitation of the Task Force was held in Montreal in August 1968. These meetings proved to be very valuable. They reflected the acceptance, interest and co-operation of the deputy ministers in the work of the Task Force and enabled the members and the deputy ministers to have frank exchanges of views on a wide range of industrial relations problems and issues.

(2) Schedule of Meetings with Parties of Interest

1967

Canada Department of Labour	–April 21 in Ottawa	Deputy Minister, Assistant Deputy Ministers and other senior officials
Canadian Construction Association	–April 28 in Ottawa	Labour Relations Committee
The Canadian Manufacturers' Association	–May 4 in Toronto	National Industrial Relations Committee
Federal and Provincial Deputy Ministers	–Sept. 1966 in Fredericton	Deputy Ministers
	–January 27 in Ottawa	
	–May 26 in Ottawa	
	–Sept. 13 in Ottawa	
Ontario Department of Labour	–May 5 in Toronto	Deputy Minister, Chairman of the Labour Relations Board, Chief Conciliation Officer, and other senior officials
Canadian Railway Labour Executives Association	–May 11 in Montreal	Members of the Association

Quebec Department of Labour	–June 28 in Quebec	Deputy Minister, Chairman of the Labour Relations Board, Chief Conciliation Officer, and other senior officials
Confederation of National Trade Unions	–June 29 in Montreal	President and Secretary General
Canadian Labour Congress	–July 7 in Ottawa	Vice-President, Secretary-Treasurer and other senior officials
Canada Labour Relations Board	–October 12 in Ottawa	Chairman, Members and senior staff of the Board
The Railway Association of Canada	–October 26 in Montreal	Officials and representatives of members of the Association
Air Transportation Association of Canada	–November 9 in Ottawa	Officials and representatives of members of the Association
Unions in the radio and television industry	–November 23 in Toronto	Officials of the various unions
Canadian Trucking Association and Canadian Warehousing Association	–November 24 in Toronto	Officials of members of the Associations
National Liaison Committee of the air industry unions	–November 30 in Montreal	Members of the Committee
Teamsters Union	–December 7 in Toronto	Officials of the Union
Canadian Association of Broadcasters	–December 8 in Toronto	Officials and representatives of members of the Association
1968		
Unions in areas of federal jurisdiction	–January 3 in Vancouver	Officials of the various unions
Groups of British Columbia employers	–January 4 in Vancouver	Senior managers of companies and representatives of employer associations
Commercial and Industrial Research Foundation	–January 4 in Vancouver	President and other officers
British Columbia Department of Labour	–January 5 in Victoria	Assistant Deputy Minister of Labour, Vice-Chairman, Labour Relations Board and other senior officials
Alberta Department of Labour	–January 8 in Edmonton	Deputy Minister and Vice-Chairman of the Board of Industrial Relations and other senior officials
Saskatchewan Department of Labour	–January 9 in Regina	Minister of Labour, Chairman of the Labour Relations Board and other senior officials
Manitoba Department of Labour	–January 10 in Winnipeg	Minister of Labour, Deputy Minister of Labour, Chairman of the Manitoba Labour Board and other senior officials

Federal and Provincial Deputy Ministers	–January 11 in Ottawa	Deputy Ministers
	–August 15, 16 in Montreal	
Canadian Labour Congress	–January 23 in Ottawa	Acting President, Vice-President and other senior officials
The Shipping Federation of Canada	–January 25 in Montreal	President and other officials of the Federation
Air Transportation Association of Canada	–February 1 in Ottawa	President of the Association and officials of some member companies
The Canadian Chamber of Commerce	–February 8 in Montreal	General Manager of the Chamber and members of its Industrial Relations Committee
Canadian Broadcasting Corporation	–February 15 in Ottawa	Director and Assistant Director of Industrial and Labour Relations
The Canadian Manufacturers' Association	–February 23 in Toronto	Industrial Relations and Quebec Division Managers of the Association and members of its National Industrial Relations Committee
Telephone and Communication Companies	–February 29 in Montreal	Officials of Bell Telephone Company of Canada, British Columbia Telephone Company and Canadian Overseas Telecommunication Corporation
Canadian Railway Labour Executives Association	–March 1 in Montreal	Officials and representatives of members of the Association
Canadian Labour Congress	–March 15 in Ottawa	Acting President, Executive Vice-President and other senior officials
Telephone Industry Unions	–March 21 in Toronto	Officials of the Canadian Telephone Employees'Association, Traffic Employees' Association, Federation of Telephone Workers of British Columbia, and Overseas Communication Union No. 272
Unions of officers and men aboard ship	–March 28 in Montreal	Officials of the Seafarers' International Union, Canadian Maritime Union, Canadian Merchant Service Guild and Canadian Marine Officers Union
Canadian Lake Carriers Association	–March 29 in Montreal	General Manager of the Association and officials of member companies
Canadian Pulp and Paper Association	–April 25 in Montreal	Vice-President and Industrial Relations Manager of Association and officials of Member companies

Canada Department of Labour	–April 26 in Ottawa	Deputy Minister, Assistant Deputy Minister and other senior officials
Department of Manpower and Immigration	–May 2 in Ottawa	Deputy Minister, Assistant Deputy Minister and other senior officials
Nova Scotia Department of Labour	–June 5 in Halifax	Deputy Minister and other senior officials
Newfoundland Department of Labour	–June 17 in St. John's	Deputy Minister and other senior officials
Nova Scotia Department of Labour	–June 19 in Halifax	Deputy Minister and other senior officials
Prince Edward Island Department of Labour	–June 19 in Charlottetown	Chairman of the Labour Relations Board and other senior officials
New Brunswick Department of Labour	–June 20 in Fredericton	Acting Deputy Minister and other senior officials
Building Trades Unions	–Sept 19 in Ottawa	Officers of various unions

Appendix I

SUBMISSION OF BRIEFS

(1) General

Early in September 1967 interested organizations and individuals were invited to submit briefs to the Task Force. The invitation was extended by placing advertisements in 29 daily newspapers in 24 cities across the country and in eight major business, labour and financial journals. In addition, a Notice re Submission of Briefs was sent directly to 517 trade unions, employers' associations and professional societies to ensure that groups directly concerned with industrial relations would be aware of the Task Force's invitation for briefs, should they have missed the published notice.

To guide those wishing to submit briefs, a Memorandum on Submissions was prepared to accompany the Notice re Submission of Briefs and to send to those requesting further information in response to the advertisement. The Memorandum presented in detail the nature of the problems with which the Task Force was confronted. It was emphasized, however, that briefs should not necessarily be restricted to these areas.

December 31, 1967, was set as the deadline for the receipt of briefs, but all submissions received after that date were accepted and given full consideration by the members. Seventy-three organizations and individuals submitted written briefs; they are listed below.

Each of the briefs was reviewed by the Task Force and all suggestions and recommendations were noted. In some cases the briefs served as the basis for private discussions with the organizations concerned; and in some instances organizations submitted their briefs after meeting with the Task Force. The members were encouraged by the diversity and quality of the submissions which came from private individuals, trade unions and their locals, labour councils and federations, other employee associations, companies, employer associations, boards of trade and chambers of commerce, professional groups, and others.

Documentation relating to the submission of briefs includes a copy of the advertisement soliciting briefs, a list of the newspapers and journals in which it appeared, information on the number of special notices sent out, and a copy of the Notice re Submission of Briefs and the Memorandum on Submissions. These are reproduced after the list of written submissions.

The Task Force secured copies of 46 briefs that had been submitted to the Ontario Royal Commission (Rand) Inquiry into Labour Disputes, as well as a copy of the transcript of that Commission's public hearings. These documents also were studied by the Task Force and relevant suggestions and recommendations noted.

(2) Briefs and Submissions

Air Transport Association of Canada, Ottawa, Ontario.
Alberta Federation of Labour, Edmonton, Alberta.
The Alberta Teachers' Association, Edmonton, Alberta.
Association des Professeurs de l'École normale Laval, (SPEQ), Quebec, Quebec.
The Association of Professional Engineers of Alberta, Edmonton, Alberta.
The Association of Professional Engineers of the Province of Ontario, Toronto, Ontario.
Association of Radio and Television Employees of Canada, Montreal, Quebec.
The Bell Telephone Company of Canada, Montreal, Quebec.
Mrs. N. Booker, Toronto, Ontario.
British Columbia Maritime Employers Association, Vancouver, British Columbia.
Caland Ore Company Limited, Atikokan, Ontario.
Canadian Air Line Employees' Association, Rexdale, Ontario.
The Canadian Association of Broadcasters, Ottawa, Ontario.
The Canadian Chamber of Commerce, Montreal, Quebec.
Canadian Export Association, Montreal, Quebec.
The Canadian Manufacturers' Association, Toronto, Ontario.
Canadian Maritime Union, Port Colborne, Ontario.
The Canadian Medical Association, Toronto, Ontario.
Canadian Merchant Service Guild, Ottawa, Ontario.
Canadian Nurses' Association, Ottawa, Ontario.
Canadian Plumbing and Mechanical Contractors Association, Vancouver, British Columbia.
Canadian Pulp and Paper Association, Montreal, Quebec.
Canadian Railway Labour Executives' Association, Ottawa, Ontario.

Canadian Telephone Employees' Association, Toronto, Ontario.
Canadian Trucking Associations Inc., Ottawa, Ontario.
Canadian Warehousing Association, Toronto, Ontario.
Mr. Douglas Carmichael, Dartmouth, Nova Scotia.
Mr. John T. Carvell, Counsel, the St. Lawrence Seaway Authority, Ottawa, Ontario.
La Chambre de commerce du district de Montréal, Montreal, Quebec.
The Chemical Institute of Canada, Ottawa, Ontario.
Christian Labour Association of Canada and the C.J.L. Foundation (The Committee for Justice and Liberty), Rexdale, Ontario.
The Civil Service Association of Alberta, Edmonton, Alberta.
Mr. V. H. Coley, Edmonton, Alberta.
Commercial and Industrial Research Foundation, (now Employers' Council of British Columbia), Vancouver, British Columbia.
The Corporation of Dietitians of Quebec, Montreal, Quebec.
Dominion Marine Association, Ottawa, Ontario.
Edmonton and District Labour Council, Edmonton, Alberta.
Mr. Ralph Ellis, Hamilton, Ontario.
Mr. George F. Edwards, Vancouver, British Columbia.
Fédération des Travailleurs du Québec, Montreal, Quebec.
Mr. George S. P. Ferguson, Ferguson, Montgomery, Cassels & Mitchell, Barristers and Solicitors, Toronto, Ontario.
The Forty-Plus Society of Canada (Ottawa Chapter), Ottawa, Ontario.
Mr. John Foster, Jr., Camlachie, Ontario.
Mr. John N. Franklin, Baie d'Urfe, Quebec.
Mr. Harry D. Garner, Lambeth, Ontario.
Government of the Northwest Territories, Yellowknife, N.W.T.
Mr. James McL. Hendry, Ottawa, Ontario.
Mr. Maurice G. Jacques, Division Manager, Investors Syndicate Limited, Montreal, Quebec.
Mr. Mervin Mirsky, Vice-President, Pure Spring (Canada) Limited, Ottawa, Ontario.
Mr. Roy McCallum, Winnipeg, Manitoba.
Mr. J. B. McClelland, McClelland, Ward & Partners, Management Consultants, Toronto, Ontario.
MacMillan Bloedel Limited, Vancouver, British Columbia.
The National Liaison Committee of Airline Employees' Associations, Montreal, Quebec.
North Vancouver Chamber of Commerce, North Vancouver, British Columbia.
The Ontario Dietetic Association, Toronto, Ontario.
Ontario Federation of Labour, Toronto, Ontario.
Ontario Municipal Electric Association, Toronto, Ontario.
Mr. William Leonard Ovens, Don Mills, Ontario.
The Railway Association of Canada, Montreal, Quebec.
Retail Council of Canada, Toronto, Ontario.
Sarnia and District Labour Council, Sarnia, Ontario.
Saskatchewan Federation of Labour, Regina, Saskatchewan.
The Saskatchewan Government Employees' Association, Regina, Saskatchewan.
Saskatchewan Mining Association, Regina, Saskatchewan.
Mr. Norman J. Sears, Vancouver, British Columbia.
The Shipping Federation of Canada Inc., Montreal, Quebec.
Mr. Archie Thorton, Scarborough, Ontario.
United Electrical, Radio and Machine Workers of America, Local 520 and 504, Hamilton, Ontario.
United Packinghouse, Food and Allied Workers of America, District 8 (Canada), Toronto, Ontario.
United Steelworkers of America, Toronto, Ontario.
Vancouver Board of Trade, Vancouver, British Columbia.
Mr. Harry Vogt, Prince George, British Columbia.
Mr. J. E. Wilkins, Montreal, Quebec.

(3) Advertisement for the Submission of Briefs

Interested organizations and members of the public are invited to submit briefs to the Task Force on Labour Relations which has been instructed by the Prime Minister "to examine industrial relations in Canada and to make recommendations to the Government with respect to public policy and labour legislation and on such other matters as it considers relevant to the public interest in industrial relations in Canada".

Information on the submission of briefs can be obtained by writing to:

Research Director,
Task Force on Labour Relations,
Room 700, 150 Kent Street,
OTTAWA 4, Canada.

(4) Publications in Which Briefs and Submissions Were Solicited

DAILY PAPERS

(*Advertisement inserted for 2 consecutive days*)

St. John's Newfoundland—Evening Telegram
Halifax, N.S.—Chronicle Herald
Sydney, N.S.—Cape Breton Post
Saint John, N.B.—Telegraph-Journal
Fredericton, N.B.—Gleaner
Charlottetown, P.E.I.—Guardian
Quebec City—Le Soleil
Montreal—Le Devoir, La Presse, Montreal Star, The Gazette
Ottawa—Le Droit, Ottawa Citizen
Fort William and Port Arthur—Times Journal
Toronto—Globe and Mail, Toronto Star
Sudbury—Star
Hamilton—Spectator
London—Free Press
Windsor—Star
Winnipeg—Free Press
Regina—Leader Post
Saskatoon—Star-Phoenix
Edmonton—Journal
Calgary—Herald
Victoria—Times
Vancouver—Sun
Prince George—Citizen
Yukon—Daily News

OTHER PUBLICATIONS

(*Advertisement inserted once*)

Financial Post
Financial Times
Canadian Labour—Journal of the CLC
The Locomotive Engineer—Journal of the Brotherhood of Locomotive Engineers
Le Travail—Journal of the CNTU
Industrial Canada—Journal of The Canadian Manufacturers' Association
Canadian Business—Journal of The Canadian Chamber of Commerce
Labour Gazette

(5) Distribution of Special Notices

The following Notice re Submission of Briefs and the accompanying Memorandum on Submissions were sent to 517 trade unions, employers associations and professional societies as follows:

Trade unions:	
National and international	167
Provincial Federations of Labour, CLC	10
Local Labour Councils, CLC	115
Local Labour Councils, CNTU	20
Associations and Societies	164
Chambers of Commerce and Boards of Trade	39
Others	2
	517

(6) Notice re Submission of Briefs

The Task Force on Labour Relations is inviting, through an advertisement in newspapers and Canadian publications, the submission of briefs from organizations and members of the public. It will not be holding public hearings. By this notice, we would like to draw your attention to the invitation for briefs in case you should miss the published notice.

The Task Force, which is made up of Dean H. D. Woods, Chairman, Dean A. W. R. Carrothers, Professor John H. G. Crispo and Abbé Gerard Dion, is anxious to benefit from the thinking of experienced and interested persons. If you wish to submit a brief, please feel free to discuss industrial relations issues or problems as you see them. The enclosed document may be of assistance in drawing your attention to problem areas. Please do not let it restrict you in your observations.

Briefs should be submitted at the earliest possible time and, in any case, not later than December 31, 1967. They should be typed double spaced on one side of $8\frac{1}{2}'' \times 11''$ paper and submitted in 15 copies. Please leave wide margins. Those who do not have facilities for multiple copies may submit one copy only. If you wish your submission to be confidential, please so mark each copy of the brief. Kindly mail briefs to:

Research Director,
Task Force on Labour Relations,
Room 700—150 Kent Street,
OTTAWA 4, Ontario.

(7) Memorandum on Submissions

Purpose

This memorandum has been prepared to assist those individuals and organizations who may wish to make submissions to the Task Force on Labour Relations. It should be looked upon as a framework for analysis of

problems and in no way a set of directives to be followed. The members of the Task Force are particularly anxious to receive submissions which emphasize problems and proposals which those making submissions consider to be important. Nevertheless, this document may be helpful since it indicates the problem areas being examined by the Task Force.

Responsibility of the Task Force

A letter from the Prime Minister to the Chairman set out the Terms of Reference as follows:

> "The Task Force has been set up to examine industrial relations in Canada and to make recommendations to the Government with respect to public policy and labour legislation and on such other matters as it considers relevant to the public interest in industrial relations in Canada. In carrying out its duties the Task Force should feel free to adopt such procedures as may be appropriate."

Nature of the Problem

The members interpret their task as one of analyzing industrial relationships in Canada, identifying problem areas, examining the institutions and the structure of union-management relations, diagnosing industrial conflict, reviewing public policy and the agencies established to deal with conflict, and making recommendations designed to prevent and resolve difficulties and ensure a healthy industrial relations system. In addition, they realize the need to consider the public interest in the costs of industrial conflict and the public concern with the economic implications of collective bargaining settlements.

To discharge their responsibility, it is necessary to examine both unions and management and their interrelationships. The structure of unionism and of management will be examined in the light of the role collective bargaining has been called upon to play in the past, as will be the impact on collective bargaining.

Approach

The work has been divided into four groups of studies:

(1) the industrial relations environment,
(2) the principal parties involved,
(3) the process of bargaining, conflict and accommodation,
(4) the results of accommodations and settlements.

A. *Environmental Problems*

Industrial relationships function within a context of forces which are economic and social and political and legal. Changes in any of these forces will have effects on the industrial relationships themselves. To understand the latter requires knowledge of the former. Specific influences that seem to be important include such matters as trends in the labour force itself,

increasing wealth and changing social values regarding income and affluence, the impact of technological and administrative and organizational change in industry, regional differences and characteristics in the country, as well as important cultural facts such as the presence of language groups and the enormous influence of the United States economy and social systems. Legal issues in the industrial relations environment include the existing body of law and the constitutional division of powers. Finally, there are such influential matters as changing educational levels and public opinion toward industrial relations as well as attitudes toward authority, law, violence and civil disobedience.

B. *The Parties Involved*

The principal parties are labour, management and government. With regard to the labour movement, the Task Force is interested in such matters as trends in union membership; the evolving structure of unionism and its suitability for the tasks before it, including the locus of power and decision-making processes in trade unions; the philosophy of labour, including its goals and labour's view of itself and its role; problems of union jurisdiction and rivalry and trends in union structural change.

Similarly, on the management side the Task Force is examining the evolution of management organizations, and power; and the thinking of management toward personnel and industrial relationships, trade unionism, collective bargaining and the role of government in industrial relations. Included are such matters as the evolution over recent decades of management thinking on industrial relations problems, changing administrative practices, the effect of professionalization of the personnel function, the influence of corporate (and especially American) approaches and practices, and current policies regarding supervision, job design, fringe benefits, etc.

The third party involved is government. Here the concern is with public policy and the instruments of policy and their effectiveness. Policy issues involved are the role of private decision making, freedom of association, the duty to bargain and the use of economic power, and derivative matters such as unfair labour practices, the rights of individuals (both employers and employees), the concept of the bargaining unit, compulsory recognition, bargaining in good faith, conciliation, and the validity of the work stoppage. The principal instruments of policy of concern to the Task Force are labour relations boards, conciliation officers and boards, mediators, commissions of inquiry and the like. Experiments with bipartite and tripartite committees established to assist in the making of policy are also of interest. Of great importance are devices concerned with essential-industry disputes, including both non-arbitral and arbitral devices.

C. *The Process of Bargaining and Dispute Settlement*

Under this heading the Task Force is interested in the structure of collective bargaining and the interplay of influences between and among

bargaining situations; the extent of co-ordinated bargaining by unions and employers; the issues and trends in bargaining; the administration and enforcement of agreements, including the question of management rights; the criteria for settlements; the spread of collective bargaining into new areas such as public employees, professional workers, supervisors and white collar groups and the problems of policy and administration related thereto. The Task Force is also interested in examining industrial relations problems in specific industries.

D. *Results of Collective Bargaining*

In addition to the statistical results regarding the extent of collective bargaining, the numbers involved, the incidence of strikes and lockouts, and the cost of strikes in man hours, production losses, etc., the Task Force is concerned with the duration of collective agreements, human adjustment to industrial change as it enters into labour relations, the behaviour of wages, the effect on prices and price stability, employment, and the distribution of income, the significance of bargained results for international trade, the evolving pattern of hours of work and employment, and the relationship between public industrial standards and privately determined standards (minimum wages, etc.) and between public manpower policies and collective bargaining.

Summary

The above problem areas are those the Task Force feels it must explore if it is to meet its responsibility to the Prime Minister. Comments are invited on any of them or on other matters concerning labour relations that may not fall within any of these headings.

The Task Force on Labour Relations is made up of Dean H. D. Woods, Faculty of Arts and Science, McGill University, Montreal, (Chairman); Dean A. W. R. Carrothers, Faculty of Law, The University of Western Ontario, London; Professor John H. G. Crispo, Director, Centre for Industrial Relations, University of Toronto; and Abbé Gérard Dion, Faculté des sciences sociales, Université Laval, Québec. Dr. George Saunders of the Canada Department of Labour is Research Director.

Address correspondence to:

Research Director,
Task Force on Labour Relations,
Room 700—150 Kent Street,
Ottawa 4, Ontario.

Appendix J

RESEARCH PROGRAM

(1) General

Central to the activities of the Task Force was its research program. The paucity of published analytical works on industrial relations in Canada was of concern to the members even before they were named to the Task Force. A comprehensive research program was essential if they were to be in a position to formulate analyses and recommendations based on more than informed insight into the country's industrial relations environment, structure, procedures and problems.

Some 88 different studies were planned on all facets of industrial relations, including economic, social, legal and political ramifications. Some of the studies involved simply an updating of existing research; others entailed bringing together views, experience and information in the form of working reference papers. Most of the studies involved the development of new information and the application of original analysis and interpretation.

The research program was developed by the members during the early months of the Task Force operations. Because of time constraints and the need to get results quickly, the program was divided into a relatively large number of separate projects, each of which could be handled in a short period of time. Those who were invited to participate in the research program were asked to devote the summer of 1967 to their projects and to submit preliminary reports in the fall of the same year. This timetable was developed in order to give the members an opportunity to study the research findings in preparation for their meetings with the parties of interest and government officials, most of which were scheduled starting in the fall of 1967, and for the formulation of their views for the final report.

To give this comprehensive program some order, the projects were grouped into five categories, following a framework that fitted the various studies into an integrated system of analysis. Four of these categories are essentially the same as those set out in Part Two of this Report where the characteristics of the present Canadian industrial relations system are described in terms of environmental factors, the parties of interest, processes of interaction, and results. In addition, the research outline also included a series of special studies of industrial relations in different industries and jurisdictions.

Some 73 of the 88 studies were undertaken by the best available research talent in the country. Each study was assigned on the basis of a detailed research proposal submitted by the person or agency undertaking it, and the proposal was reviewed carefully by the members of the Task Force.

Forty-two of these studies were contracted out to individuals, primarily university professors across the country, and 31 were undertaken in federal Government departments or agencies, principally in the Department of Labour. The remaining studies were not commissioned, although some work was done on a number of them in the Task Force office.

The studies that were undertaken in federal agencies were, in most instances, part of the continuing programs of those agencies. The Department of Manpower and Immigration, the Department of Finance, the Economic Council of Canada and the Dominion Bureau of Statistics assisted in the research program in addition to the Department of Labour.

There is inevitably some overlapping and duplication of effort in a large undertaking of this nature. To lessen this and to ensure a high level of co-ordination of effort and consistency, close liaison was maintained between the Task Force office in Ottawa and the research project directors. Early in the research program, on June 4 and 5, 1967, a meeting of project directors was held in Ottawa to acquaint them with the program and to encourage discussion of matters of mutual interest. Following this, the Task Force office continued its efforts to promote communications among the research personnel, assisted in making arrangements for those doing field work and kept the project directors informed and up to date on the research and other activities of the Task Force.

To help the members begin formulating their views as early as possible, arrangements were made with the project directors to submit preliminary reports of their studies. Most of these reports were received in the fall of 1967 and winter of 1967-68. Because of a late start or other reasons, preliminary reports for a few studies were not received until the summer or early fall of 1968. The members not only read all reports but undertook the task of preparing comments to help the project directors in the preparation of their final reports. Members of the Senior Government Committee and officials of some federal government departments assisted the Task Force in this undertaking.

The studies are of widely varying quality. This is to be expected in a research program of this magnitude that must be completed within a very limited time. Many of the studies will be published, and some will be mimeographed for limited distribution. The remainder will be deposited with the Task Force's records in the Public Archives.

The published studies and those reproduced for limited distribution should fill a serious gap in the present literature on industrial relations in Canada. The studies chosen for publication were selected on the basis of technical competence, degree of probable interest and potential impetus for further research. Some of the non-published studies were of equal competence and quality but other factors, such as their extremely technical content or restricted reader interest, influenced decisions against their publication.

The research program is seen as a possible beginning of a new era in industrial relations research in this country. The research vacuum that has existed has been detrimental to the development and formulation of appropriate public policy in industrial relations. The members are gratified to note that a number of the studies undertaken for the Task Force are being continued in universities and departments of labour across the nation. Several studies are being used by students who were connected with the Task Force program as a basis for theses for advanced degrees. It is extremely important that this research momentum be continued if a sound understanding of industrial relations developments is to be maintained, if trained personnel are to be developed, and if policy is to be based on intelligent and sophisticated research.

(2) Schedule of Research Projects

I—ENVIRONMENTAL STUDIES

The studies under this heading examine a number of environmental factors that appear to have had or to be having an important bearing on labour-management relations in this country.

A. The General Socio-Economic-Political Environment

The Postwar Socio-Economic-Political Context
An analysis of significant postwar social, economic and political developments of relevance in industrial relations.
H. C. Pentland (Dept. of Economics, University of Manitoba)

The Affluent Society, Conspicuous Consumption and the Demand for More
A sociological and psychological examination of the nature, extent and implications of the acquisitive instinct in society at large and an assessment of its industrial relations implications.
W. A. Westley (Industrial Relations Centre, McGill University)

Unions and the Affluent Society
A case study of worker attitudes towards the affluent society, conspicuous consumption and the demand for more and of the effect of these attitudes on unions.
Bernard Solasse (Dept. of Industrial Relations, Laval University)

Labour Force Trends
A statistical and interpretative history of the labour force since 1941 with particular reference to changes in such characteristics as its occupational, regional and industrial composition.
P.-P. Proulx (Dept. of Economics, University of Montreal)

The Impact of Industrial Conversion A sociological and psychological analysis of the impact of technological and other industrial changes on workers and their attitudes.	Jan J. Loubser (Dept. of Sociology, University of Toronto)
Automation and Employment A study of the impact of automation on employment.	E. F. Beach (Dept. of Economics, McGill University)

B. The Legal System

The Federal-Provincial Division of Powers A study of problems arising from the constitutional allocation of power in the industrial relations field between the federal and provincial governments.	E. E. Palmer R. G. Atkey G. J. Brandt (Faculty of Law, University of Western Ontario)
Public Policy and Labour Legislation—An Historical Review A study of the history of public policy and labour legislation, with particular reference to a descriptive and analytical view of the evolution of the law with respect to such matters as certification, unfair labour practices, conciliation, strike votes, boycotts, sympathy strikes and emergency disputes.	Edith Lorentsen (Legislation Branch, Canada Department of Labour) with J. I. Bell (Graduate Student in Law, Harvard University)

C. The American Presence

The Trade Union Link Between Canada and the United States An assessment of the significance of international unionism with particular reference to its impact on collective bargaining.	(See J. H. G. Crispo *International Unionism,* McGraw-Hill Company, 1967)
Canada-United States Wage Differentials A survey of trends in the differentials between Canadian and U.S. wage rates in selected industries and occupations.	Allan A. Porter (Economics and Research Branch, Canada Department of Labour)

D. Other Environmental Factors

An Evaluation of Civil and Criminal Disobedience A study of civil and criminal disobedience as a general phenomenon in North America.	Mark R. MacGuigan (Faculty of Law, University of Windsor)
A Perspective on the Use of Violence in Labour Disputes A study of violence in labour disputes along with an analysis of the implications of such violence.	Françoise Côté (Free lance journalist)
Public Opinion and Industrial Relations A study based on Gallup Poll data of past and present attitudes of different segments of the public toward various facets of the Canadian industrial relations system.	R. R. March (Dept. of Political Science, Carleton University)

II—STUDIES OF UNIONS, MANAGEMENT AND GOVERNMENT

The studies under this heading focus attention on unions, management and government as participants in the industrial relations system.

A. The Labour Movement

Union Membership Trends since the 1930's
A statistical and interpretative history of trade unionism since the 1930's with particular reference to its changing composition by region, industry, occupation and type of union.
F. J. McKendy (Economics and Research Branch, Canada Department of Labour)

A Study of the Structure of the Quebec Labour Movement
A comparative analysis of the structure of labour organizations in the Province of Quebec.
Jacques Dofny (Department of Sociology, University of Montreal)

The Philosophy of the Labour Movement
An examination of the way in which the trade union movement's views on bargainable issues, labour and social legislation, and other public policies have evolved since the 1930's.
C. Brian Williams (Faculty of Business Administration and Commerce, University of Alberta)

The Philosophies of the Quebec Labour Movement
A comparative analysis of the philosophy of the labour movement in the Province of Quebec.
L.-M. Tremblay (Department of Industrial Relations, University of Montreal)

Inter-Union Rivalry
A study of the implications of various forms of inter-union rivalry, with particular reference to representation and jurisdictional disputes.
Paul Bélanger (Department of Sociology, Laval University)

Responsible Decision Making in Democratic Trade Unions
A survey of the problems involved in attempting to reconcile democratic and responsible decision making in trade unions, including in particular an assessment of individual rights within organizations which must act as cohesive groups if they are to function effectively as collective bargaining agencies.
E. E. Palmer (Faculty of Law, University of Western Ontario)

Contract Ratification and Strike Authorization Procedures
An examination of the way in which unions arrive at certain critical collective bargaining decisions and of the way in which legislation affects those procedures.
Fernand Morin (Faculty of Law, Laval University)

B. Management

Employer Approaches and Practices in Industrial Relations (English Canada)
A series of studies focusing on the evolution of management, management organization, and the power of management, and on the impact of this evolution on management thinking toward trade unionism collective bargaining, and the role of gov-
J. J. Wettlaufer
George Forsyth
A. M. Mikalachki
(School of Business Administration, University of Western Ontario)

ernment in industrial relations. Among the topics this series of studies will focus on are the following:

a) the evolution of management approaches and practices in industrial relations since the 1930's;

b) the approaches and practices of employer associations.

Employer Approaches and Practices in Industrial Relations (French Canada)

Laurent Bélanger (Department of Industrial Relations, Laval University)

These studies will focus on some of the same topics as the foregoing management studies, with particular reference on French Canada:

a) the evolution of management approaches and practices in industrial relations and

b) the functions and influence of employer associations.

C. GOVERNMENT

The Size and Composition of Bargaining Units

E. E. Herman (Department of Economics, University of Cincinnati)

A survey of the nature of bargaining units established by labour relations boards for certification purposes and their relevance to prevailing economic and institutional arrangements.

Unfair Labour Practices

Innis Christie
Morley R. Gorsky (Faculty of Law, Queen's University)

A study of the nature, extent and handling of unfair labour practices.

The Role of the Manpower Consultative Service (Department of Manpower and Immigration) and the Labour-Management Consultation Branch (Canada Department of Labour)

J. T. Montague (Institute of Industrial Relations, University of British Columbia)

A description and analysis of the operation of the Manpower Consultative Service and the Labour-Management Consultation Branch as agencies of government designed to encourage the parties to deal with certain problems outside of the normal collective bargaining framework.

Essential Industry Dispute Settlement Techniques

H. W. Arthurs (Osgoode Hall Law School)

A description and analysis of the means which have been employed in Canada and in other countries to settle disputes in industries whose uninterrupted services are considered vital to the public interest.

Compulsory Arbitration

Donald J. M. Brown (Osgoode Hall Law School)

An assessment of the advantages and disadvantages associated with dispute settlement approaches which rely on compulsory third party adjudication.

III—STUDIES OF THE COLLECTIVE BARGAINING PROCESS

These studies focus attention on certain trends and problems in the relationships between labour and management.

The Structure of Collective Bargaining

An examination of the evolution of the structure of collective bargaining in Canada, and of the interrelationships between different sets of negotiations.

Alton Craig
(Economics and Research Branch, Canada Department of Labour)

Issues in Collective Bargaining

A survey of trends in the issues dealt with in collective bargaining and of the significance of those trends.

Félix Quinet
(Economics and Research Branch, Canada Department of Labour)

Coordinated Bargaining by Unions and Employers

A survey of the extent and ramifications of multi-party bargaining among both union and employer groups.

C. G. Simmons
Faculty of Law, Queen's University

The Administration and Enforcement of Collective Agreements

A survey of trends and problems in the administration and enforcement of collective agreements with particular reference to grievance and arbitration procedures.

a) *The Substantive Law of Labour Arbitration*

A survey of trends and problems in the administration and enforcement of collective agreements, particularly the capability of arbitration to deal with the problem of change during the term of a collective agreement.

Paul C. Weiler
(Osgoode Hall Law School)

b) *Labour Arbitration Procedures*

A survey of intra-agreement labour arbitration during the term of collective agreements and procedures adopted to resolve differences that arise.

Stanley Schiff
(Faculty of Law, University of Toronto)

Earnings Trends and Wage Determination in the Public Sector

A study of the economic implications of earning trends in the public sector and an analysis of the factors which bear upon them.

Economic Analysis Division, Department of Finance, Ottawa

Professional Workers and Collective Bargaining

An analysis of the problems that professional workers and their employers face when they adopt a collective bargaining relationship.

Shirley B. Goldenberg
(Department of Economics and Political Science, McGill University)

Supervisors and Collective Bargaining

An analysis of the problems that supervisors and their employers face when they adopt a collective bargaining relationship.

Robert Rogow
(Department of Economics, Simon Fraser University)

White Collar Workers and Collective Bargaining

An analysis of the problems that white collar workers and their employers face when they adopt a collective bargaining relationship.

Frances Bairstow (Industrial Relations Centre, McGill University)

IV—STUDIES OF THE RESULTS OF COLLECTIVE BARGAINING

These studies concentrate on the results of collective bargaining.

The Duration of Collective Agreements

A descriptive and analytical treatment of trends in the duration of collective agreements.

Ruby Samlalsingh (Dominion Bureau of Statistics)

Human Adjustment to Industrial Conversion

An analysis of the various accommodations that unions and management have produced in response to the impact of technological and other changes on workers, and an examination of the role of government in this context.

Arthur Kruger (Department of Political Economy, University of Toronto)

Wage Behaviour

A descriptive analysis of the behaviour of wages in relation to other economic and institutional variables.

(See Economics and Research Branch, Canada Department of Labour, "The Behaviour of Canadian Wages and Salaries in the Postwar Period—A Graphic Presentation", mimeographed)

The Implications of United States Wage Parity

A study of the potential ramifications of wage parity with the United States in selected industries and in the economy as a whole.

Paul Wonnacott (Dept. of Economics, University of Maryland) with R. J. Wonnacott (Dept. of Economics and Sociology, University of Western Ontario)

Collective Bargaining and the Trade-Off Problem

An economy-wide and industry-by-industry analysis of the role of collective bargaining in the trade-off between full employment and price stability.

Grant Reuber (Dept. of Economics and Sociology, University of Western Ontario)

Collective Bargaining and Labour Mobility

An examination of the impact of collective bargaining on the mobility of labour by industry, occupation and area.

(See O.E.C.D., *Wages and Labour Mobility*, Paris 1965)

Collective Bargaining and Canada's Competitive Position

An examination of the impact of collective bargaining on Canada's international trade position in both import- and export-competing industries.

(See William J. Carrol, University of Guelph, "Labour Costs and Productivity and their Implication for Canada—A Survey of 25 Industries, 1949-1965", Economics and Research Branch, Canada Department of Labour, Mimeographed)

Hours of Work and Employment An examination of the relationships among hours of work, employment and output, and a consideration of the demand for reduced hours of work as a means to meeting employment problems.	Syed M. A. Hameed (Economics and Research Branch, Canada Department of Labour)
Progress-Sharing and Profit-Sharing A descriptive and analytical treatment of various progress- and profit-sharing plans and their relationship to collective bargaining.	Jack Chernick (Institute of Management and Labor Relations, Rutgers, The State University, New Brunswick, New Jersey)
Industrial Unrest A study to provide an historical perspective on industrial unrest and the factors which give rise to labour-management conflict.	Stuart Jamieson and John Vanderkamp (Dept. of Economics and Political Science, University of British Columbia)
Statutory Strikes An examination of statutory strikes as a substitute for strikes and lockout.	Abbé Gérard Dion (Member of the Task Force)
Criteria for Identifying Emergency Disputes A study of possible criteria for identifying disputes which jeopardize the public interest.	Pierre Verge (Faculty of Law, Laval University)
Impact of Minimum Wage and Industrial Standards Legislation An assessment of the impact of minimum wage and industrial standards legislation on such variables as wages, costs, prices and employment.	Mahmood A. Zaidi (Industrial Relations Center, University of Minnesota)

V—SPECIAL STUDIES

These studies draw on the experience of labour and management in different industries and jurisdictions.

Industry Case Studies
A series of studies focusing on the industrial relations systems in particular industries.

Meatpacking	Alton Craig (Economics and Research Branch, Canada Department of Labour)
Steel	Robert Christy (Economics and Research Branch, Canada Department of Labour)
Pulp and paper	Donald Brazier (Economics and Research Branch, Canada Department of Labour)

Construction	Gordon W. Bertram (Dept. of Economics, University of Victoria)
Railways	Stephen G. Peitchinis (Dept. of Economics, University of Western Ontario)
Airlines	Daniel Coates (Graduate Student in Industrial Relations, Cornell University)
Automobiles	Norman Coates (Wharton School of Finance and Commerce, University of Pennsylvania)
Textiles and clothing	J. A. McIntyre (Dept. of Sociology and Anthropology, University of Guelph)
Retail food stores	David W. McKinney (Dept. of Sociology and Anthropology, University of Guelph)
Shipping and Longshoring	Gerald Swartz and Stephen Wace (Graduate Students in Industrial Relations, University of Illinois)
Trucking	Graeme H. McKechnie (Dept. of Economics, York University)
Chemical products	George Eaton (Atkinson College, York University)
Electrical products	Howard J. C. Elliott (Graduate Student in Economics, Princeton University)
Printing	Bruce M. MacDonald (Graduate Student in Economics, University of British Columbia)
Teachers	J. Douglas Muir (Faculty of Business Administration and Commerce, University of Alberta)
Fishing	John D. Boyd (Dept. of Economics, University of British Columbia)

Municipal government	C. G. Simmons Faculty of Law, Queen's University
Radio and television	Ruby Samlalsingh (Dominion Bureau of Statistics)
Provincial Case Studies An examination of provincial experience with labour-management consultative bodies of one kind or another.	Aranka Kovacs (Dept. of Economics, University of Windsor)
Foreign Case Studies A series of appraisals designed to draw on the experiences of other countries where these seem relevant for Canada.	Paul Malles (Economic Council of Canada)
Compulsory Arbitration in Australia An analysis of the compulsory arbitration system in Australia and its relevance for Canada.	J. E. Isaac (Faculty of Economics and Politics, Monash University, Australia)
Case Studies of Industrial Disputes A study of the courses, characteristics and consequences of a number of recent strikes.	Maxwell Flood (Institute of Industrial Relations, Michigan State University)
Communications and Behavioural Science in Industrial Relations The role of communications and the application of behavioural knowledge in conflict reduction; the mutuality of goals in the economic system.	G. K. Cowan (Economic Council of Canada)

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